

## INTRODUCTION

The Enforcement Management System (EMS) describes general information about the enforcement procedures of the Oklahoma Agriculture Pollutant Discharge Elimination System (AgPDES) program of the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF). The purpose of the EMS is to document the policies and procedures to be followed in identifying, documenting and responding to AgPDES violations. These policies and procedures are developed with three primary objectives:

- Ensuring that violators return to compliance as quickly as possible;
- Deterring future noncompliance; and
- Establish penalties for noncompliance

The ensuing sections provide a detailed description of the EMS. It is divided into three general sections which include the violation review process, general enforcement policies, and descriptions of informal, formal administrative, and civil and criminal enforcement processes. The procedures described herein are guidelines and exceptional cases may warrant actions other than those specified in this document.

### Enforcement Guidelines

The EMS is a guidance to help compliance and enforcement officials in determining the appropriate enforcement response to a specific violation of an AgPDES permit. The EMS serves two purposes:

- It recommends an enforcement response that is timely and appropriate with respect to the nature and severity of the violation and the overall degree of noncompliance; and
- It ensures uniform application of enforcement response to comparable levels and types of violations.

The EMS addresses a broad range of AgPDES Program violations and is not intended to cover them all. The enforcement responses are suggested responses and reflect the enforcement actions available to the ODAFF. The ODAFF, when taking into consideration the elements of the EMS, can elect any of the enforcement responses available consistent with state law. Strict compliance with this guidance is not necessary, as the ODAFF maintains enforcement discretion in most of the cases.

The measure of the effectiveness of an enforcement response includes whether the noncompliant facility returns to compliance as expeditiously as possible and the enforcement response establishes the appropriate deterrent effect for the particular violators and for other potential violators. It also promotes fairness of government treatment among comparable violators, as well as among complying and non-complying parties.

When making determinations on the level of the enforcement response, the technical and legal staff consider:

- the degree of variance from the permit condition or legal requirement,
- severity of adverse impacts or threats of adverse impacts to human health or the environment,
- the duration of the violation,
- previous enforcement actions taken against the violator, and
- the deterrent effect of the response on the violator and on the similarly situated regulated community.

Choosing among the various enforcement options to achieve maximum compliance with the AgPDES rules and statutes depends on the circumstances of each individual case and, ultimately, the decision depends on the judgment of those involved. Enforcement is just one of the tools that ODAFF has to improve compliance with the Act and its rules. The ODAFF works with the regulated community before violations occur to inform them of their responsibilities under the Act and, where feasible, to provide compliance assistance.

Compliance assistance occurs every time an ODAFF staff responds to an inquiry from the regulated community. ODAFF also develops clear and reasonable rules or works with a permit applicant to create effective permit conditions for a facility. However, when violations occur within the regulated community and enforcement becomes necessary, ODAFF will use this EMS to the extent possible and practicable to guide its enforcement decisions.

Only through effective and reasonable enforcement can the ODAFF work toward fulfilling its policy and purpose to protect and enhance Oklahoma's surface water quality and resources. Effective enforcement helps deter future noncompliance, guarantees that violators do not gain an unfair business advantage over their competitors and ensures protection of human health and the environment.

## Administrative Procedures Act

### §75-250. Short title.

A. This section and Sections 250.1 through 323 of this title shall be known and may be cited as the "Administrative Procedures Act".

B. All statutes hereinafter enacted and codified as part of the Administrative Procedures Act shall be considered and deemed part of the Administrative Procedures Act.

Added by Laws 1987, c. 207, § 1. Amended by Laws 1989, c. 360, § 1, emerg. eff. June 3, 1989; Laws 1997, c. 206, § 2, eff. Nov. 1, 1997.

### §75-250.1. Composition of act.

A. The Administrative Procedures Act shall be composed of two Articles. Sections 250, 250.1, 250.3, 250.4, 250.5 and 250.8 of this title are applicable to both Articles I and II. Article I relating to agency filing and publication requirements for rules shall consist of Sections 250.2, 250.6, 250.7 and 250.9 through 308.2 of this title and Section 5 of this act. Article II relating to agency notice and hearing requirements for individual proceedings shall consist of Sections 308a through 323 of this title.

B. Except as otherwise specifically provided in Section 250.4 of this title, all agencies shall comply with the provisions of Article I and Article II of the Administrative Procedures Act.

Added by Laws 1987, c. 207, § 2. Amended by Laws 1989, c. 360, § 2, emerg. eff. June 3, 1989; Laws 1997, c. 206, § 3, eff. Nov. 1, 1997.

### §75 250.2. Legislative intent.

A. Article V of the Oklahoma Constitution vests in the Legislature the power to make laws, and thereby to establish agencies and to designate agency functions, budgets and purposes. Article VI of the Oklahoma Constitution charges the Executive Branch of Government with the responsibility to implement all measures which may be resolved upon by the Legislature.

B. In creating agencies and designating their functions and purposes, the Legislature may delegate rulemaking authority to these agencies to facilitate administration of legislative policy. The delegation of rulemaking authority is intended to eliminate the necessity of establishing every administrative aspect of general public policy by legislation. In so doing, however, the Legislature reserves to itself:

1. The right to retract any delegation of rulemaking authority unless otherwise precluded by the Oklahoma Constitution.
2. The right to establish any aspect of general policy by legislation, notwithstanding any delegation of rulemaking authority.
3. The right and responsibility to designate the method for rule promulgation, review and modification.
4. The right to approve, delay, suspend, veto, or amend the implementation of any rule or proposed rule while under review by the Legislature by joint resolution.
5. The right to disapprove a proposed rule or amendment to a rule during the legislative review period independent of any action by the Governor by a concurrent resolution.
6. The right to disapprove a permanent or emergency rule at any time if the Legislature determines such rule to be an imminent harm to the health, safety or welfare of the public or the state or if the Legislature determines that a rule is not consistent with legislative intent.

Added by Laws 1987, c. 207, § 3. Amended by Laws 1991, c. 326, § 1, eff. July 1, 1991; Laws 1992, c. 310, § 1, eff. July 1, 1992.

### §75-250.3. Definitions.

As used in the Administrative Procedures Act:

1. "Administrative head" means an official or agency body responsible pursuant to law for issuing final agency orders;
2. "Adopted" means a proposed emergency rule or permanent rule which has been approved by the agency but has not been reviewed by the Legislature and the Governor;
3. "Agency" includes but is not limited to any constitutionally or statutorily created state board, bureau, commission, office, authority, public trust in which the state is a beneficiary, or interstate commission, except:
  - a. the Legislature or any branch, committee or officer thereof, and
  - b. the courts;
4. "Emergency rule" means a rule that is made pursuant to Section 253 of this title;
5. "Final" or "finally adopted" means a rule other than an emergency rule, which has been approved by the Legislature and by the Governor, or approved by the Legislature pursuant to subsection B of Section 308 of this title and otherwise complies with the requirements of the Administrative Procedures Act but has not been published pursuant to Section 255 of this title;
6. "Final agency order" means an order that includes findings of fact and conclusions of law pursuant to Section 312 of this title, is dispositive of an individual proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of this title and which is subject to judicial review;
7. "Hearing examiner" means a person meeting the qualifications specified by Article II of the Administrative Procedures Act and who has been duly appointed by an agency to hold hearings and, as required, render orders or proposed orders;
8. "Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature;
9. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;
10. "Office" means the Office of the Secretary of State;
11. "Order" means all or part of a formal or official decision made by an agency including but not limited to final agency orders;
12. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;
13. "Permanent rule" means a rule that is made pursuant to Section 303 of this title;
14. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;
15. "Political subdivision" means a county, city, incorporated town or school district within this state;
16. "Promulgated" means a finally adopted rule which has been filed and published in accordance with the provisions of the Administrative Procedures Act, or an emergency rule or preemptory rule which has been approved by the Governor;
17. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term "rule" includes the amendment or revocation of an effective rule but does not include:
  - a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license,
  - b. the approval, disapproval or prescription of rates. For purposes of this subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications,
  - c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public,

- d. declaratory rulings issued pursuant to Section 307 of this title,
  - e. orders by an agency, or
  - f. press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;
18. "Rulemaking" means the process employed by an agency for the formulation of a rule; and
19. "Secretary" means the Secretary of State.

Added by Laws 1963, c. 371, § 1. Amended by Laws 1969, c. 128, § 1, emerg. eff. April 7, 1969; Laws 1978, c. 64, § 28; Laws 1983, c. 327, § 2; Laws 1985, c. 196, § 11, emerg. eff. June 26, 1985; Laws 1987, c. 207, § 11. Renumbered from § 301 of this title by Laws 1987, c. 207, § 27. Amended by Laws 1988, c. 292, § 1, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 3, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 1, eff. July 1, 1991; Laws 1992, c. 310, § 2, eff. July 1, 1992; Laws 1994, c. 182, § 1, eff. July 1, 1994; Laws 1997, c. 206, § 4, eff. Nov. 1, 1997; Laws 1998, c. 239, § 1, eff. Nov. 1, 1998; Laws 2010, c. 174, § 1, eff. Nov. 1, 2010.

#### §75-250.4. Compliance with act - Exemptions.

- A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.
2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.
3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.
4. The Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Office of Homeland Security and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.
5. The Transportation Commission and the Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.
6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:
- a. prescribing standards of higher education,
  - b. prescribing functions and courses of study in each institution to conform to the standards,
  - c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
  - d. allocation of state-appropriated funds, and
  - e. fees within the limits prescribed by the Legislature.
7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.
8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 303.2, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations, or pursuant to Chapter 6 of Title 47 of the Oklahoma Statutes, to maintain a current incorporation of federal commercial driver license

regulations, for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.

b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference.

c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.

d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

9. The Council on Judicial Complaints shall be exempt from Section 306 of Article I of the Administrative Procedures Act, with respect to review of the validity or applicability of a rule by an action for declaratory judgment, or any other relief based upon the validity or applicability of a rule, in the district court or by an appellate court. A party aggrieved by the validity or applicability of a rule made by the Council on Judicial Complaints may petition the Court on the Judiciary to review the rules and issue opinions based upon them.

10. The Department of Corrections, State Board of Corrections, county sheriffs and managers of city jails shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners, and

b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;

2. The Commission for Human Services;

3. The Oklahoma Ordnance Works Authority;

4. The Corporation Commission;

5. The Pardon and Parole Board;

6. The Midwestern Oklahoma Development Authority;

7. The Grand River Dam Authority;

8. The Northeast Oklahoma Public Facilities Authority;

9. The Council on Judicial Complaints;

10. The Board of Trustees of the Oklahoma College Savings Plan;

11. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

12. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:

a. participation in a riot as defined by the penal code,

- b. possession or sale of any drugs or narcotics prohibited by the penal code, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or
- c. willful destruction of or willful damage to state property;
- 13. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:
  - a. any rule regarding the running of a race,
  - b. any violation of medication laws and rules,
  - c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
  - d. any assault or other destructive acts within Commission-licensed premises,
  - e. any violation of prohibited devices, laws and rules, or
  - f. any filing of false information;
- 14. The Commissioner of Public Safety only with respect to driver license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;
- 15. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;
- 16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;
- 17. The Oklahoma Military Department;
- 18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;
- 19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and
- 20. The Oklahoma Office of Homeland Security.

Added by Laws 1987, c. 207, § 12. Amended by Laws 1987, c. 236, § 125, emerg. eff. July 20, 1987; Laws 1988, c. 292, § 2, emerg. eff. July 1, 1988; Laws 1990, c. 136, § 1, emerg. eff. April 25, 1990; Laws 1990, c. 300, § 2, emerg. eff. May 30, 1990; Laws 1993, c. 330, § 30, eff. July 1, 1993; Laws 1994, c. 384, § 1, eff. July 1, 1994; Laws 1995, c. 330, § 4, emerg. eff. June 8, 1995; Laws 1996, c. 320, § 11, emerg. eff. June 12, 1996; Laws 1997, c. 206, § 5, eff. Nov. 1, 1997; Laws 1998, c. 239, § 2, eff. Nov. 1, 1998; Laws 1999, c. 1, § 42, emerg. eff. Feb. 24, 1999; Laws 1999, c. 423, § 11, emerg. eff. June 10, 1999; Laws 2000, c. 6, § 30, emerg. eff. March 20, 2000; Laws 2001, c. 131, § 16, eff. July 1, 2001; Laws 2002, c. 402, § 12, eff. July 1, 2002; Laws 2003, c. 279, § 13, emerg. eff. May 26, 2003; Laws 2004, c. 157, § 6, emerg. eff. April 26, 2004; Laws 2005, c. 176, § 8, eff. July 1, 2005.

NOTE: Laws 1987, c. 231, § 5 repealed by Laws 1987, c. 236, § 203, emerg. eff. July 20, 1987. Laws 1998, c. 203, § 10 repealed by Laws 1999, c. 1, § 45, emerg. eff. Feb. 24, 1999. Laws 1999, c. 142, § 4 repealed by Laws 2000, c. 6, § 33, emerg. eff. March 20, 2000.

§75-250.4a. Certain rules to be available for public inspection - Deletion of obsolete rules and internal policy statements - Private rights and procedures not affected.

A. Any agency exempt from all or part of the Administrative Procedures Act pursuant to subsection A of Section 250.4 of this title shall maintain and make available for public inspection its exempt rules at its principal place of business.

B. It is recognized by the Oklahoma Legislature that agencies specified by subsection A of this section have published rules containing obsolete rules or internal policy statements or agency statements which do not meet the Administrative Procedures Act definition of rules. Therefore, by December 31, 2005, each such agency shall conduct an internal review of its rules to determine whether each of its rules is

current and is a rule as such term is defined by the Administrative Procedures Act. Any rule determined by an agency to be obsolete or an internal policy statement or any agency statement which does not meet the definition of a rule pursuant to the Administrative Procedures Act shall be deleted by the agency. Notice of such deletion shall be submitted to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor for informational purposes.

C. The provisions of this section shall not be construed to authorize any agency to amend any rule or to delete any rule which affects any private rights or procedures available to the public.

Added by Laws 1997, c. 206, § 6, eff. Nov. 1, 1997. Amended by Laws 2005, c. 227, § 1, eff. Nov. 1, 2005.

§75 250.5. Act not to apply to certain governments, authorities, etc.

This act shall not apply to municipalities, counties, school districts, and other agencies of local government; nor to specialized agencies, authorities, and entities created by the legislature, performing essentially local functions, such as, but not limited to, Urban Renewal Authorities, Port Authorities, City and City County Planning Commissions, Conservancy and other Districts, and public trusts having a municipality or county, or agency thereof, as beneficiary; but this act shall apply to public trusts having the state, or any department or agency thereof, as beneficiary.

Laws 1963, c. 371, § 24. Renumbered from § 324 by Laws 1987, c. 207, § 27.

§75-250.6. Commission for Human Services - Preemptive rules - Approval by Governor - Filing of approval and rule - Publication - Disapproval by Legislature - Exemptions.

A. 1. The Commission for Human Services may promulgate a preemptive rule pursuant to the provisions of this section:

a. when the Commission for Human Services is required by federal law, federal rules, a state law enacted pursuant to federal law or federal rule, or order of a court of competent jurisdiction to adopt a rule, or an amendment, revision or revocation of an existing rule, and

b. which if such rule is not immediately adopted would result in the imposition of a financial penalty, or a reduction, withholding or loss of federal funds.

2. A preemptive rule must be approved by the Governor pursuant to this section.

3. The conditions specified in this subsection for the promulgation of a preemptive rule shall be the only conditions authorized for promulgation of such rule by the Commission for Human Services.

B. 1. Upon the adoption of such preemptive rule by the Commission, the Director of the Department of Human Services shall request the Governor to approve the rules on the basis that such rules are required to comply with a federal law, federal rule, a state law enacted pursuant to federal law or rule, or order of a court of competent jurisdiction and which if such rules are not immediately adopted would result in a financial penalty, or a reduction, withholding or loss of federal funds.

2. Upon the filing of the request for approval of a preemptive rule, the Governor shall review such rule and decide as to whether such rule should be approved. Prior to approval of a preemptive rule, the Governor shall submit the preemptive rule to the Office of the Secretary of State for review of proper formatting unless the preemptive rule has been reviewed by the Office prior to agency submission to the Governor. Failure of the Governor to approve such rule within twenty-eight (28) calendar days shall constitute denial of the rule as a preemptive rule.

3. Upon approval of a preemptive rule, the Governor shall immediately notify the Commission. Upon receipt of notice of the approval of the preemptive rule, the Commission shall file the number of copies specified by the Secretary of the approval issued by the Governor and the number of copies specified by the Secretary of the preemptive rule with the Office pursuant to Section 251 of this title.



4. The preemptive rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

5. For informational purposes only, a copy of the Governor's approval and the preemptive rule shall be submitted by the Commission to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within ten (10) days of the approval of the preemptive rule by the Governor.

6. Upon approval by the Governor, the rule shall be considered promulgated and shall be in force immediately, or if a later date is required by statute or specified in the rule, the later date is the effective date.

C. A preemptive rule shall be considered to be a permanent rule and shall remain in full force and effect unless and until specifically disapproved during the first thirty (30) legislative days of the next regular legislative session following promulgation of such preemptive rule or unless an earlier expiration date is specified by the Commission. The Legislature may disapprove such rule pursuant to Section 308 of this title. Any resolution introduced for the purpose of disapproving such rule shall not be subject to regular legislative cut off dates.

D. Except as otherwise provided by this section, preemptive rules shall be promulgated and published in compliance with Article I of the Administrative Procedures Act. Preemptive rules promulgated pursuant to the provisions of this section shall be exempt from the provisions of Sections 253, 303, 303.1, 303.2, 304, 308 and 308.1 of this title.

Added by Laws 1988, c. 266, § 25, operative July 1, 1988. Amended by Laws 1990, c. 300, § 3, eff. July 1, 1991; Laws 1991, c. 326, § 2, eff. July 1, 1991; Laws 1994, c. 384, § 2, eff. July 1, 1994; Laws 1997, c. 206, § 8, eff. Nov. 1, 1997; Laws 1998, c. 239, § 3, eff. Nov. 1, 1998; Laws 2005, c. 227, § 2, eff. Nov. 1, 2005.

§75-250.7. Conflicts between filed rules and published rules - Corrections of errors - Status of Code rules - Presumption of compliance with act.

A. Prior to publication in the "Code" or any of its supplements, in cases where there is a conflict between the finally adopted rules filed with the Office pursuant to Section 251 of this title and rules published in "The Oklahoma Register", the rules published in "The Oklahoma Register" pursuant to Section 255 of this title shall govern and shall constitute the official rule of the agency. Except as provided in subsection C of this section, permanent rules published in "The Oklahoma Register" shall be void and of no effect upon publication of the next succeeding "Code" or "Code" supplement, if not published in such "Code" or "Code" supplement.

B. The Secretary is authorized to establish procedures for correcting spelling errors in:

1. The finally adopted rules of any agency or any document submitted for publication in "The Oklahoma Register" or the "Code"; or

2. Any rules or other document published in "The Oklahoma Register".

C. Rules published in the "Code" and in the supplements thereto, and permanent rules published in "The Oklahoma Register" after the closing date for publication in the last preceding "Code" or "Code" supplement, as announced by the Secretary, but prior to publication of the next succeeding "Code" or "Code" supplement, shall constitute the official permanent rules of the state.

D. For any rule published in the "Code" or the supplements thereto, there shall be a rebuttable presumption that such rule has been promulgated in compliance with the Administrative Procedures Act.

Added by Laws 1988, c. 292, § 3, emerg. eff. July 1, 1988. Amended by Laws 1990, c. 300, § 4, eff. July 1, 1991; Laws 1991, c. 326, § 3, eff. July 1, 1991; Laws 1994, c. 384, § 3, eff. July 1, 1994; Laws 1997, c. 206, § 9, eff. Nov. 1, 1997.

§75-250.8. Time computations.

In computing any period of time prescribed or allowed by the Administrative Procedures Act, the day of the act, or event, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, or any other day when the receiving office does not remain open for public business until 4:00 p.m.; provided, permanent rules shall become effective on the tenth day after the rules are published in "The Oklahoma Register", as set forth in subsection B of Section 304 of this title, regardless of the day of the week.

Laws 1989, c. 360, § 4, emerg. eff. June 3, 1989. Amended by Laws 2004, c. 183, § 1, emerg. eff. May 3, 2004.

§75-250.9. Transfer of powers, duties and responsibilities of Director of Department of Libraries relating to publication of The Oklahoma Register and Administrative Code to Secretary of State.

There is hereby established an Office of Administrative Rules within the Office of the Secretary of State. The Office of Administrative Rules shall have the primary responsibility for publishing "The Oklahoma Register" and the "Oklahoma Administrative Code" and otherwise implementing the provisions of Article I of the Administrative Procedures Act. The Secretary of State shall provide for the adequate staffing of the Office to implement the provisions of this section including but not limited to an editor-in-chief.

Added by Laws 1990, c. 300, § 5, eff. July 1, 1991. Amended by Laws 1991, c. 326, § 4, eff. July 1, 1991; Laws 1997, c. 206, § 10, eff. Nov. 1, 1997.

§75-250.10. Request for agency review of rules.

The Governor by Executive Order or either house of the Legislature or both houses of the Legislature by resolution, or a small business or the Small Business Regulatory Review Committee pursuant to Section 5 of this act, may request an agency to review its rules to determine whether or not the rules in question should be amended, repealed or redrafted. The agency shall respond to requests from the Governor or the Legislature within ninety (90) calendar days of such request.

Added by Laws 1994, c. 384, § 11, eff. July 1, 1994. Amended by Laws 2002, c. 495, § 7, eff. July 1, 2002.

§75-251. Furnishing copies of permanent rules - Rules for administration of section - Filing of new rules and amendments, revisions or revocations - Format - Incorporation of standards by reference - Publication of executive orders - Electronic filing.

A. 1. Upon the request of the Secretary, each agency shall furnish to the Office a complete set of its permanent rules in such form as is required by the Secretary or as otherwise provided by law.

2. The Secretary shall promulgate rules to ensure the effective administration of the provisions of Article I of the Administrative Procedures Act. The rules shall include, but are not limited to, rules prescribing paper size, numbering system, and the format of documents required to be filed pursuant to the provisions of the Administrative Procedures Act or such other requirements as deemed necessary by the Secretary to implement the provisions of the Administrative Procedures Act.

B. 1. Each agency shall file the number of copies specified by the Secretary of all new rules, and all amendments, revisions or revocations of existing rules attested to by the agency, pursuant to the provisions of Section 254 of this title, with the Office within thirty (30) calendar days after they become finally adopted.

2. An agency filing rules pursuant to the provisions of this subsection:

a. shall prepare the rules in plain language which can be easily understood,

b. shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a rule interpreting that language, the reference shall clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification or interpretation of that language,

c. shall indicate whether a rule is new, amends an existing permanent rule or repeals an existing permanent rule. If a rule amends an existing rule, the rule shall indicate the language to be deleted typed with a line through the language and language to be inserted typed with the new language underscored,

d. shall state if the rule supersedes an existing emergency rule,

e. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Secretary shall insert that reference in "The Oklahoma Register" as a notation to the affected rule,

f. shall prepare, in plain language, an analysis of new or amended rules. The analysis shall include but not be limited to a reference to any statute that the rule interprets, any related statute or any related rule,

g. may include with its rules, brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material. Such material may be included if the material is labeled or set forth in a manner which clearly distinguishes it from the rules,

h. shall include other information, in such form and in such manner as is required by the Secretary, and

i. may change the format of existing rules without any rulemaking action by the agency in order to comply with the standard provisions established by the Secretary for "Code" and "The Oklahoma Register" publication so long as there is no substantive change to the rule.

C. The Secretary is authorized to determine a numbering system and other standardized format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

D. In order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The standards shall be readily available to the public for examination at the administrative offices of the agency. In addition, a copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.

E. The Secretary shall provide for the publication of all Executive Orders received pursuant to the provisions of Section 664 of Title 74 of the Oklahoma Statutes.

F. The Secretary may authorize or require the filing of rules or Executive Orders by or through electronic data or machine readable equipment in such form and manner as is required by the Secretary.

Added by Laws 1961, p. 602, § 1. Amended by Laws 1984, c. 154, § 1, eff. Nov. 1, 1984; Laws 1987, c. 207, § 4; Laws 1988, c. 292, § 4, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 5, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 6, eff. July 1, 1991; Laws 1991, c. 326, § 5, eff. July 1, 1991; Laws 1994, c. 384, § 4, eff. July 1, 1994; Laws 1997, c. 206, § 11, eff. Nov. 1, 1997; Laws 1998, c. 239, § 4, eff. Nov. 1, 1998.

§75 252. Filing as condition of validity Notification of failure to comply.

A. Any rule, amendment, revision, or revocation of an existing rule made by an agency on or after October 16, 1987, may be held void and of no effect pursuant to Sections 306 and 307 of this title. All provisions herein shall also apply to all agencies that may hereafter be created. All courts, boards, commissions, agencies, authorities, instrumentalities, and officers of the State of Oklahoma shall take

judicial or official notice of any rule, amendment, revision, or revocation of an existing rule promulgated pursuant to the provisions of the Administrative Procedures Act.

B. Upon failure of an agency to comply with the provisions of Sections 251 through 256 of this title except when not applicable, the Secretary shall forward a written notice of the failure to comply to the chief administrative officer of the agency. The notice shall state a reasonable time, not to exceed thirty (30) calendar days, in which the agency shall fully comply. Further failure to comply shall be reported in writing to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Governor, and the Attorney General. Upon such notification, the Attorney General shall immediately seek agency compliance and if required, to institute mandamus proceedings to secure compliance by said agency.

Laws 1961, p. 603, § 2; Laws 1987, c. 207, § 5; Laws 1988, c. 292, § 5, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 6, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 7, eff. July 1, 1991.

#### §75-253. Emergency rules.

A. 1. If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated pursuant to the provisions of this section, if the rule is first approved by the Governor. The Governor shall not approve the adoption, amendment, revision or revocation of a rule as an emergency measure unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:

- a. protect the public health, safety or welfare,
- b. comply with deadlines in amendments to an agency's governing law or federal programs,
- c. avoid violation of federal law or regulation or other state law,
- d. avoid imminent reduction to the agency's budget, or
- e. avoid serious prejudice to the public interest.

As used in this subsection, "substantial evidence" shall mean credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

2. In determining whether a rule is necessary as an emergency measure, the Governor shall consider whether the emergency situation was created due to the agency's delay or inaction and could have been averted by timely compliance with the provisions of this chapter.

B. An emergency rule adopted by an agency shall:

1. Be prepared in the format required by Section 251 of this title;

2. a. Include an impact statement which meets the requirements set forth in subparagraph b of this paragraph unless the Governor waives the requirement in writing upon a finding that the rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest.

b. The rule impact statement shall include, but not be limited to:

- (1) a brief description of the proposed rule,
- (2) a description of the persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,
- (3) a description of the classes of persons who will benefit from the proposed rule,
- (4) a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- (5) the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,

(6) a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,

(7) an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

(8) a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

(9) a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

(10) the date the rule impact statement was prepared and if modified, the date modified.

c. The rule impact statement shall be prepared on or before the date the emergency rule is adopted;

3. Be transmitted pursuant to Section 464 of Title 74 of the Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, along with the information required by this subsection within ten (10) days after the rule is adopted; and

4. Not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

C. 1. Within forty-five (45) calendar days of receipt of a proposed emergency rule filed with the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, the Governor shall review the demonstration of emergency pursuant to subsection A of this section, and shall separately review the rule in accordance with the standards prescribed in paragraph 3 of this subsection.

2. Prior to approval of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

3. If the Governor determines the agency has established the rule is necessary as an emergency measure pursuant to subsection A of this section, the Governor shall approve the proposed emergency rule if the rule is:

a. clear, concise and understandable,

b. within the power of the agency to make and within the enacted legislative standards, and

c. made in compliance with the requirements of the Administrative Procedures Act.

D. 1. Within the forty-five-calendar-day period set forth in paragraph 1 of subsection C of this section, the Governor may approve the emergency rule or disapprove the emergency rule. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule.

2. If the Governor disapproves the adopted emergency rule, the Governor shall return the entire document to the agency with reasons for the disapproval. If the agency elects to modify the rule, the agency shall adopt the modifications, and shall file the modified rule in accordance with the requirements of subsection B of this section.

3. Upon disapproval of an emergency rule, the Governor shall, within fifteen (15) days, make written notification to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules.

E. 1. Upon approval of an emergency rule, the Governor shall immediately make written notification to the agency, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules. Upon receipt of the notice of the approval, the agency shall file with

the Office of Administrative Rules as many copies of the notice of approval and the emergency rule as required by the Secretary.

2. Emergency rules shall be subject to legislative review pursuant to Section 308 of this title.

3. The emergency rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following the approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

F. 1. Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein. An emergency rule shall only be applied prospectively from its effective date.

2. The emergency rule shall remain in full force and effect through the first day of the next succeeding regular session of the Legislature following promulgation of such emergency rule until July 14 following such session, unless it is made ineffective pursuant to subsection H of this section.

G. No agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law.

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

2. Any promulgated emergency rule shall be made ineffective if:

- a. disapproved by the Legislature,
- b. superseded by the promulgation of permanent rules,
- c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title, or
- d. an earlier expiration date is specified by the agency in the rules.

3. a. Emergency rules in effect on the first day of the session shall be null and void on July 15 immediately following sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature.

b. Unless otherwise authorized by the Legislature, by concurrent resolution or by law, an agency shall not adopt any emergency rule, which has become null and void pursuant to subparagraph a of this paragraph, as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void pursuant to subparagraph a of this paragraph.

I. Emergency rules shall not become effective unless approved by the Governor pursuant to the provisions of this section.

J. 1. The requirements of Section 303 of this title relating to notice and hearing shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an abbreviated notice and hearing process determined to be necessary by an agency.

2. The rule report required pursuant to Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

3. The statement of submission required by Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President

Pro Tempore of the Senate in accordance with the requirements set forth in Section 464 of Title 74 and to the Office of Administrative Rules as required by the Secretary. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

L. Upon completing the requirements of this section, an agency may promulgate a proposed emergency rule. No emergency rule is valid unless promulgated in substantial compliance with the provisions of this section.

M. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.

Added by Laws 1961, p. 603, § 3. Amended by Laws 1987, c. 207, § 6; Laws 1988, c. 292, § 7, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 7, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 8, eff. July 1, 1991; Laws 1991, c. 326, § 6, eff. July 1, 1991; Laws 1992, c. 310, § 3, emerg. eff. May 27, 1992; Laws 1994, c. 182, § 2, eff. July 1, 1994; Laws 1994, c. 384, § 5, eff. July 1, 1994; Laws 1996, c. 225, § 1, eff. Nov. 1, 1996; Laws 1997, c. 206, § 12, eff. Nov. 1, 1997; Laws 1998, c. 239, § 5, eff. Nov. 1, 1998; Laws 1999, c. 211, § 1, eff. Nov. 1, 1999; Laws 2010, c. 174, § 2, eff. Nov. 1, 2010.

§75-254. Attestation of rules - Proof of publication - Copies - Preservation.

A. Prior to the submission to the Governor of emergency rules, or prior to the transmission of a finally adopted rule to the Secretary, the rulemaking authority or its designee shall attest:

1. To the correctness of copies of any rule and any amendment, revision, or revocation thereof; and
2. That such rules were made and adopted if the rules are emergency rules or finally adopted if the rules are permanent rules in substantial compliance with the Administrative Procedures Act.

Such attested rules shall then be transmitted to the Secretary or if the rules are emergency to the Governor's office, for filing and publication pursuant to the Administrative Procedures Act.

B. Upon publication of such transmitted rules pursuant to Section 255 of this title, the Secretary shall send proof of publication to the agency submitting the rules for publication. The agency submitting the rules shall make such rules available to the public in accordance with the Open Records Act.

C. Copies of such rules shall be permanently preserved by the Secretary.

Added by Laws 1961, p. 603, § 4. Amended by Laws 1987, c. 207, § 7; Laws 1988, c. 292, § 8, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 9, eff. July 1, 1991; Laws 1998, c. 239, § 6, eff. Nov. 1, 1998.

§75-255. Publication of The Oklahoma Register - Publication of rules and regulations.

A. 1. The Secretary is hereby authorized, directed, and empowered to publish "The Oklahoma Register" not less than monthly for the publication of new rules, any amendment, revision or revocation of an existing rule, emergency rules, any notices of such rulemaking process and Executive Orders as are required by law to be published in "The Oklahoma Register". Said rules or amendments, revisions, or revocations of existing rules shall be published in the first issue of "The Oklahoma Register" published pursuant to Sections 251, 253, 256, 303, 303.1, 303.2 and 308 of this title after the date of acceptance by the Secretary.

2. The Secretary shall cause a copy of each publication of "The Oklahoma Register" to be sent to those county clerks who request it, to members of the Legislature upon request, and to such other agencies, libraries, and officials as the Secretary may select. The Secretary may charge recipients of the publication a cost sufficient to defray the cost of publication and mailing.

3. The Secretary shall cause a copy of all rules, all new rules, and all amendments, revisions, or revocations of existing rules to be on file and available for public examination in the Office during normal office hours.

4. The Secretary shall promulgate rules to systematize the designations of rules. To establish said system or to preserve uniformity of designations, the Secretary may require the agency to change the title or numbering of any rule or any amendment, revision, or revocation thereof.

B. The Secretary is authorized to provide for the publication of rules in summary form when the rules are of such length that publication of the full text would be too costly. The summary shall be prepared by the agency submitting the rules and shall state where the full text of the rule may be obtained.

C. The notice required pursuant to the provisions of Section 303 of this title shall be published in "The Oklahoma Register" prior to the adoption of a new rule, or amendment, revision or revocation of any existing rule. The notice shall include the information required by Section 303 of this title.

Added by Laws 1961, p. 603, § 5. Amended by Laws 1983, c. 76, § 1, eff. Nov. 1, 1983; Laws 1987, c. 207, § 8; Laws 1988, c. 292, § 9, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 8, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 10, eff. July 1, 1991; Laws 1996, c. 35, § 1, eff. Nov. 1, 1996; Laws 1997, c. 206, § 13, eff. Nov. 1, 1997; Laws 1998, c. 239, § 7, eff. Nov. 1, 1998.

#### §75-256. Oklahoma Administrative Code - Publication - Task Force on Administrative Rules.

A. 1. The Secretary shall provide for the codification, compilation, indexing and publication of agency rules and Executive Orders in a publication which shall be known as the "Oklahoma Administrative Code" in the following manner:

a. On or before January 1, 1992, the Secretary shall compile Executive Orders which are effective pursuant to paragraph 3 of subsection B of this section, and agency rules which have been submitted pursuant to the agency schedule of compliance and have been accepted as properly codified, as set forth in this section, and rules promulgated by the Secretary. Such compilation shall be maintained by the Office of Administrative Rules and shall be updated by agencies, in a manner prescribed by the Secretary, to reflect subsequent permanent rulemaking. Prior to publication of the first "Code", as set forth in subparagraph b of this paragraph, the compilation shall constitute the official permanent rules of the state. Effective January 1, 1992, any permanent rule not included in such compilation shall be void and of no effect.

b. On or before December 1, 1992, the Secretary shall have indexed and published the "Oklahoma Administrative Code". To effectuate this provision, the Secretary may contract for the publishing and indexing, or both of the "Oklahoma Administrative Code". Any permanent rule not published in the "Code" shall be void and of no effect. A finally adopted rule filed and published in "The Oklahoma Register" may be valid until publication of the next succeeding "Code" or "Code" supplement following the date of its final adoption. Provided, a permanent rule which is finally adopted after the closing date for publication in a "Code" or "Code" supplement as announced by the Secretary may be valid until publication of the next succeeding "Code" or "Code" supplement. A permanent rule which is published in "The Oklahoma Register" after the closing date for publication in the first "Code", as announced by the Secretary, shall be void and of no effect upon publication of the next succeeding "Code" or "Code" supplement, if not published in the "Code" or "Code" supplement.

2. Compilations or revisions of the "Code" or any part thereof shall be supplemented or revised annually. The "Code" shall be organized by state agency and shall be arranged, indexed and printed in a manner to permit separate publications of portions thereof relating to individual agencies.

3. Annual supplements to the "Code" shall be cumulative. Emergency rules shall not be published in the "Code" or in any supplements thereto.

4. The "Code" and the supplements shall include a general subject index and an agency index of all rules and Executive Orders contained therein. "The Oklahoma Register" shall also include a sections-affected index of the "Code". The "Code" and supplements shall contain such notes, cross references and explanatory materials as required by the Secretary.

5. The Secretary in preparing such rules for publication in the "Code" or supplements shall omit all material shown in canceled type. The Secretary shall not prepare any rule for publication in the "Code" which amends or revises a rule unless the rule so amending or revising conforms to the provisions of the Administrative Procedures Act.



6. The Secretary is authorized to determine a numbering system and other standardized format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

B. 1. Rules submitted and accepted for publication in the "Code" by August 15 of each year shall be published in the next succeeding "Code" or supplement thereto.

2. As soon as possible after August 15 of each year, the Secretary shall assemble all rules and Executive Orders, except emergency rules, promulgated after the publication of the preceding "Code" or "Code" supplement in accordance with the provisions of the Administrative Procedures Act for publication in the "Oklahoma Administrative Code". The "Code" or supplements thereto should be published as soon as possible after August 30 of each year.

3. Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order. Copies of all Executive Orders shall be published and indexed in the "Oklahoma Administrative Code". All Executive Orders placing agencies or employees under the State Merit System of Personnel Administration shall remain in effect unless otherwise modified by action of the Legislature.

C. The Secretary is hereby authorized and empowered to publish or to contract to publish the "Oklahoma Administrative Code", and to publish or contract to publish such annual cumulative supplements so as to keep the "Code" current. All such agreements shall provide that the publisher shall make such publications in such form and arrangement as shall be approved by the Secretary. The Secretary may publish or authorize the publication of the "Code" in part.

D. The Secretary is authorized to correct spelling errors in rules submitted for publication in the "Code" or any such supplements or in "The Oklahoma Register". Any other errors in rules submitted for publication in the "Code" may be noted in editorial notes provided by the Secretary.

E. The Secretary shall make copies of the "Code" generally available at a cost sufficient to defray the cost of publication and mailing. Except as otherwise provided by Section 257.1 of this title, the Secretary is authorized to sell or otherwise distribute the "Code" and its supplements.

F. 1. The codification system, derivations, cross references, notes of decisions, source notes, authority notes, numerical lists, and codification guides, other than the actual text of rules, indexes, tables and other aids relevant to the publication of the "Oklahoma Administrative Code" and "The Oklahoma Register" shall be the property of the state and may be reproduced only with the written consent of the Secretary. The information which appears on the same page with the text of a rule may be reproduced incidentally with the reproduction of the rule, if the reproduction is for the private use of the individual and not for resale. No person shall attempt to copyright or publish the "Oklahoma Administrative Code" or "The Oklahoma Register", in printed or electronic media, without expressed written consent of the Secretary of State. The Secretary shall notify the Speaker of the House of Representatives and the President Pro Tempore of the Senate of any requests to copyright or publish the "Oklahoma Administrative Code" or "The Oklahoma Register", prior to consent by the Secretary.

2. The Secretary may provide for the electronic access to the "Oklahoma Administrative Code" and "The Oklahoma Register" by:

a. subscription, or

b. an exclusive or a nonexclusive contract for public and private access.

3. Publications of rules by agencies are not official publications.

4. The sale or resale of the "Oklahoma Administrative Code" or any part thereof by the Secretary of State shall be exempt from any requirement mandating acquisition of a resale number and payment of sales tax.

Added by Laws 1961, p. 604, § 6. Amended by Laws 1978, c. 165, § 13; Laws 1987, c. 207, § 9; Laws 1988, c. 292, § 10, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 11, eff. July 1, 1991; Laws 1991, c. 326, §

7, eff. July 1, 1991; Laws 1992, c. 310, § 4, eff. July 1, 1992; Laws 1994, c. 100, § 1, eff. Sept. 1, 1994; Laws 1994, c. 384, § 6, eff. July 1, 1994; Laws 1997, c. 206, § 14, eff. Nov. 1, 1997; Laws 1998, c. 239, § 8, eff. Nov. 1, 1998.

§75-256.1. Repealed by Laws 1994, c. 384, § 14, eff. July 1, 1994.

§75-256.2. Repealed by Laws 1994, c. 384, § 14, eff. July 1, 1994.

§75-256.3. Fees for copying, reproducing or certifying records.

The Office of Administrative Rules shall charge the public for the costs of copying, reproducing or certifying records of the Office of Administrative Rules pursuant to Section 24A.5 of Title 51 of the Oklahoma Statutes.

Added by Laws 1992, c. 310, § 5, eff. July 1, 1992.

§75-257. Implementation of Article I of Act Legal assistance.

A. Upon the request of the Secretary, the Office of the Attorney General shall provide such legal assistance to the Office as is necessary to implement the provisions of Article I of the Administrative Procedures Act.

B. The Attorney General shall prepare and provide for the publication and distribution to the agencies, a pamphlet or information sheet as to the procedures required by the Administrative Procedures Act for the adoption, review, and promulgation of rules.

Added by Laws 1987, c. 207, § 10. Amended by Laws 1990, c. 300, § 14, eff. July 1, 1991.

§75-257.1. Reciprocal agreements for exchange of administrative codes - Offices entitled to free copy of Code.

A. The Secretary is authorized to enter into and make reciprocal agreements with other states to allow exchanges of administrative codes of such states.

B. 1. Each of the following offices shall be entitled to receive, as soon as available from the Secretary, without cost, one copy of the printed volumes of the "Code" and the supplements thereto or, upon request from an office, one copy of the "Code" and the supplements thereto on compact disc:

- a. County clerk of each county;
- b. Clerk of the Supreme Court;
- c. Attorney General;
- d. Governor;
- e. Speaker of the House of Representatives and the President Pro Tempore of the Senate;
- f. the Research, Legal and Fiscal Divisions of the House of Representatives;
- g. the Legislative Division of the Senate; and
- h. the Department of Libraries for the Law Library.

2. The Department of Libraries is authorized to obtain number of copies of the "Code" and the supplements thereto necessary for use for deposit with the Publications Clearinghouse pursuant to Sections 3-113.1 through 3-115 of Title 65 of the Oklahoma Statutes. The Secretary is authorized to retain sufficient copies for exchange purposes with other states for copies of their rules.

Added by Laws 1988, c. 292, § 13, emerg. eff. July 1, 1988. Amended by Laws 1990, c. 300, § 15, eff. July 1, 1991; Laws 1991, c. 326, § 8, eff. July 1, 1991; Laws 1997, c. 206, § 15, eff. Nov. 1, 1997; Laws 2005, c. 227, § 3, eff. Nov. 1, 2005.

§75-301. Renumbered as § 250.3 by Laws 1987, c. 207, § 27.

§75-302. Promulgation of certain rules - Public inspection of rules, orders, decisions and opinions - Rulemaking record - Prohibited actions - Violations.

A. In addition to other rulemaking requirements imposed by law, each agency which has rulemaking authority, shall:

1. Promulgate as a rule a description of the organization of the agency, stating the general course and method of the operations of the agency and the methods whereby the public may obtain information or make submissions or requests;
2. Promulgate rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions issued by the agency for use by the public;
3. Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, promulgated or used by the agency in the discharge of its functions;
4. Make available for public inspection pursuant to the provisions of the Open Records Act all final orders, decisions and opinions.

B. 1. An agency shall maintain an official rulemaking record for each proposed rule or promulgated rule. The record and materials incorporated by reference shall be available for public inspection.

2. The agency rulemaking record shall contain:

- a. copies of all publications in "The Oklahoma Register" with respect to the rule or the proceeding upon which the rule is based,
- b. copies of any portions of the agency's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based,
- c. all written petitions, requests, submissions, and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based,
- d. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations,
- e. a copy of any regulatory analysis prepared for the proceeding upon which the rule is based,
- f. a copy of the rule and analysis of each such rule filed with the Office pursuant to Section 251 of this title,
- g. all petitions for exceptions to, amendments of, or repeal or suspension of, the rule,
- h. a copy of the rule impact statement, if made, and
- i. such other information concerning such rules as may be determined necessary by the agency.

3. Upon judicial review, the record required by this section constitutes the official agency rulemaking record with respect to a rule. Except as otherwise required by a provision of law, the agency rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

C. 1. By December 31, 2002, each agency that issues precedent-setting orders shall maintain and index all such orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying in the main office and each regional or district office of the agency. The orders shall be indexed by subject.

2. After December 31, 2002, an order shall not be relied upon as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

3. An agency shall consistently apply rules to each person subject to the jurisdiction of the agency regarding issuance of orders.

D. An agency shall not by internal policy, memorandum, or other form of action not otherwise authorized by the Administrative Procedures Act:

1. Amend, interpret, implement, or repeal a statute or a rule;

2. Expand upon or limit a statute or a rule; and
  3. Except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.
- E. Any agency memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.
- F. This section shall not be construed to prohibit an agency issuing an opinion or administrative decision which is authorized by statute provided that, unless such opinion or administrative decision is issued pursuant to the procedures required pursuant to the Administrative Procedures Act, such decision or opinion shall not have the force and effect of law.
- Added by Laws 1963, c. 371, § 2. Amended by Laws 1987, c. 207, § 13; Laws 1988, c. 292, § 14, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 16, eff. July 1, 1991; Laws 1997, c. 206, § 16, eff. Nov. 1, 1997; Laws 1998, c. 239, § 9, eff. Nov. 1, 1998.

§75-303. Adoption, amendment or revocation of rule - Procedure.

- A. Prior to the adoption of any rule or amendment or revocation of a rule, the agency shall:
1. Cause notice of any intended action to be published in "The Oklahoma Register" pursuant to subsection B of this section;
  2. For at least thirty (30) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;
  3. Hold a hearing, if required, as provided by subsection C of this section;
  4. Consider the effect its intended action may have on the various types of business and governmental entities. Except where such modification or variance is prohibited by statute or constitutional constraints, if an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, penalties, fines or reporting procedures and forms to vary according to the size of a business or governmental entity or its ability to comply or both. For business entities, the agency shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; and
  5. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.
- B. The notice required by paragraph 1 of subsection A of this section shall include, but not be limited to:
1. In simple language, a brief summary of the rule;
  2. The proposed action being taken;
  3. The circumstances which created the need for the rule;
  4. The specific legal authority authorizing the proposed rule;
  5. The intended effect of the rule;
  6. If the agency determines that the rule affects business entities, a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule;
  7. The time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 3 of subsection A of this section;
  8. Whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;

9. The time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and

10. Where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number of copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in "The Oklahoma Register" pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in "The Oklahoma Register", the agency shall cause a copy of the notice of the proposed rule adoption and the rule impact statement, if available, to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Provided, in lieu of mailing copies, an agency may electronically notify interested persons that a copy of the proposed rule and the rule impact statement, if available, may be viewed on the agency's web site. If an agency posts a copy of the proposed rule and rule impact statement on its web site, the agency shall not charge persons for the cost of downloading or printing the proposed rule or impact statement. Each agency shall maintain a listing of persons or entities requesting such notice.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within thirty (30) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

- a. at least ten persons,
- b. a political subdivision,
- c. an agency,
- d. an association having not less than twenty-five members, or
- e. the Small Business Regulatory Review Committee.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than thirty (30) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in "The Oklahoma Register" at least thirty (30) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include, but not be limited to:

- a. a brief description of the purpose of the proposed rule,
- b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,
- c. a description of the classes of persons who will benefit from the proposed rule,
- d. a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and

enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,

f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,

g. a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,

h. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

i. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

j. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

k. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

4. The rule shall not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

Added by Laws 1963, c. 371, § 3. Amended by Laws 1982, c. 284, § 1, operative Oct. 1, 1982; Laws 1987, c. 207, § 14; Laws 1988, c. 292, § 15, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 17, eff. July 1, 1991; Laws 1991, c. 326, § 9, eff. July 1, 1991; Laws 1994, c. 384, § 7, eff. July 1, 1994; Laws 1995, c. 1, § 38, emerg. eff. March 2, 1995; Laws 1996, c. 225, § 2, eff. Nov. 1, 1996; Laws 1997, c. 206, § 17, eff. Nov. 1, 1997; Laws 1998, c. 239, § 10, eff. Nov. 1, 1998; Laws 1999, c. 211, § 2, eff. Nov. 1, 1999; Laws 2002, c. 495, § 8, eff. July 1, 2002; Laws 2003, c. 75, § 3, eff. July 1, 2003; Laws 2003, c. 317, § 1, emerg. eff. May 28, 2003; Laws 2005, c. 227, § 4, eff. Nov. 1, 2005.

NOTE: Laws 1994, c. 182, § 3 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995.

§75-303.1. Filing of rules, amendments, revisions or revocations and agency rule report with Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate.

A. Within ten (10) days after adoption of a permanent rule, the agency shall file two copies of the following with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate: all such new rules or amendments; revisions or revocations to an existing rule proposed by an agency; and the agency rule report as required by subsection E of this section.

B. If the agency determines in the rule impact statement prepared as part of the agency rule report that the proposed rule will have an economic impact on any political subdivisions or require their

cooperation in implementing or enforcing a proposed permanent rule, a copy of the proposed rule and rule report shall be filed within ten (10) days after adoption of the permanent rule with the Oklahoma Advisory Committee on Intergovernmental Relations for its review. Said Committee may communicate any recommendations that it may deem necessary to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate during the period that the permanent rules are being reviewed.

C. When the rules have been submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the agency shall also submit to the Office of Administrative Rules for publication in "The Oklahoma Register", a statement that the adopted rules have been submitted to the Governor and the Legislature.

D. The text of the adopted rules shall be submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate in the same format as required by the Secretary pursuant to Section 251 of this title.

E. The report required by subsection A of this section shall include:

1. The date the notice of the intended rulemaking action was published in "The Oklahoma Register" pursuant to Section 255 of this title;

2. The name and address of the agency;

3. The title and number of the rule;

4. A citation to the statutory authority for the rule;

5. The citation to any federal or state law, court ruling, or any other authority requiring the rule;

6. A brief summary of the content of the adopted rule;

7. A statement explaining the need for the adopted rule;

8. The date and location of the meeting, if held, at which such rules were adopted or the date and location when the rules were adopted if the rulemaking agency is not required to hold a meeting to adopt rules;

9. A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules;

10. A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing;

11. A rule impact statement if required pursuant to Section 303 of this title;

12. An incorporation by reference statement if the rule incorporates a set of rules from a body outside the state, such as a national code;

13. The members of the governing board of the agency adopting the rules and the recorded vote of each member;

14. The proposed effective date of the rules, if an effective date is required pursuant to paragraph 1 of subsection B of Section 304 of this title; and

15. Any other information requested by the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate or either rule review committee.

Added by Laws 1988, c. 292, § 17, emerg. eff. July 1, 1988. Amended by Laws 1989, c. 360, § 9, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 18, eff. July 1, 1991; Laws 1994, c. 384, § 8, eff. July 1, 1994; Laws 1996, c. 225, § 3, eff. Nov. 1, 1996; Laws 1997, c. 206, § 18, eff. Nov. 1, 1997; Laws 1998, c. 239, § 11, eff. Nov. 1, 1998; Laws 2011, c. 59, § 1, eff. Nov. 1, 2011.

§75-303.2. Approval or disapproval by the Governor - Time limit.

A. The Governor shall have forty-five (45) calendar days from receipt of a rule to approve or disapprove the rule.

1. If the Governor approves the rule, the Governor shall immediately notify the agency in writing of the approval. A copy of such approval shall be given by the Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon receipt of the approval, the agency shall submit a notice of such approval to the Office of Administrative Rules for publication in "The Oklahoma Register".

2. If the Governor disapproves the adopted rule, the Governor shall return the entire document to the agency with reasons in writing for the disapproval. Notice of such disapproval shall be given by the Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Failure of the Governor to approve a rule within the specified period shall constitute disapproval of the rule by the Governor. Upon receipt of the disapproval, or upon failure of the Governor to approve the rule within the specified period, the agency shall submit a notice of such disapproval to the Office of Administrative Rules for publication in "The Oklahoma Register". Any effective emergency rule which would have been superseded by a disapproved permanent rule, shall be deemed null and void on the date the Governor disapproves the permanent rule.

B. Rules not approved by the Governor pursuant to the provisions of this section shall not become effective unless otherwise approved by the Legislature by joint resolution pursuant to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

Added by Laws 1998, c. 239, § 12, eff. Nov. 1, 1998.

§75-304. Filing of adopted rules - Effective date of adopted rule or Executive Order.

A. Each agency shall file copies of each rule finally adopted by it with the Secretary, as required by Section 251 of this title.

B. 1. Each rule finally adopted is effective ten (10) calendar days after publication in "The Oklahoma Register" pursuant to Section 255 of this title unless a later date is required by statute or specified in the rule, the agency rule report, or "The Oklahoma Register", the later date is the effective date. A rule shall only be applied prospectively from its effective date.

2. a. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately or at a stated date after certification by the Governor. An emergency rule shall only be applied prospectively from its effective date.

b. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

C. Executive Orders signed by the Governor shall become effective upon the date specified therein or immediately upon issuance.

Added by Laws 1963, c. 371, § 4. Amended by Laws 1987, c. 207, § 15; Laws 1988, c. 292, § 16, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 19, eff. July 1, 1991; Laws 1997, c. 206, § 19, eff. Nov. 1, 1997; Laws 1998, c. 239, § 13, eff. Nov. 1, 1998.

§75 305. Petition requesting promulgation, amendment or repeal of a rule Form and procedure.

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. The agency shall act upon said petition within a reasonable time. If, within thirty (30) calendar days after submission of a petition, the agency has not initiated rulemaking proceedings in accordance with the Administrative Procedures Act, the petition shall be deemed to have been denied.

Laws 1963, c. 371, § 5; Laws 1987, c. 207, § 16.



§75 306. Validity or applicability of rules Action Parties Presumption of validity Burden of proof when rule appealed Declaratory judgment.

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the county of the residence of the person seeking relief or, at the option of such person, in the county wherein the rule is sought to be applied, if it is alleged the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

B. The agency shall be made a party to the action.

C. Rules promulgated pursuant to the provisions of the Administrative Procedures Act are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. When a rule is appealed pursuant to the Administrative Procedures Act it shall be the duty of the promulgating agency to show and bear the burden of proof to show:

1. that the agency possessed the authority to promulgate the rule;
2. that the rule is consistent with any statute authorizing or controlling its issuance and does not exceed statutory authority;
3. that the rule is not violative of any other applicable statute or the Constitution; and
4. that the laws and administrative rules relating to the adoption, review and promulgation of such rules were faithfully followed.

The provisions of this subsection shall not be construed to impair the power and duty of the Attorney General to review such rules and regulations and issue advisory opinions thereon.

D. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

Laws 1963, c. 371, § 6; Laws 1977, c. 114, § 1, eff. Oct. 1, 1977; Laws 1987, c. 207, § 17.

§75 307. Filing and disposition of petitions for declaratory rulings Judicial review.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any rule or order of the agency. A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review in the manner provided for review of decisions in individual proceedings as provided in Sections 317 through 323 of this title.

Laws 1963, c. 371, § 7; Laws 1987, c. 207, § 18.

§75 307.1. Legislative review of adopted rules and rulemaking process.

A. The Speaker of the House of Representatives and the President Pro Tempore of the Senate may each establish a rule review committee or designate standing committees of each such house to review administrative rules.

B. Such committees may meet separately or jointly at any time, during sessions of the Legislature and in the interim.

C. The function of the committees so established or designated shall be the review and promotion of adequate and proper rules by agencies and developing an understanding on the part of the public respecting such rules. Such function shall be advisory only.

Each committee may review all adopted rules and such other rules the committee deems appropriate and may make recommendations concerning such rules to their respective house of the Legislature, or to the agency adopting the rule, or to both their respective house of the Legislature and the agency.

D. In addition to the review of agency adopted rules pursuant to this act, each such committee shall have the power and duty to:

1. Conduct a continuous study and investigations as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of proposed rules, review of existing rules including but not limited to consideration of amendments to or repeal of existing

rules, the lack of rules, the ability of agencies to promulgate such rules, and the needs of administrative agencies;

2. Conduct a continuous study of the rulemaking process of all state agencies including those agencies exempted by Section 250.4 of this title for the purpose of improving the rulemaking process;
3. Conduct such other studies and investigations relating to rules as may be determined to be necessary by the committee; and
4. Monitor and investigate compliance of agencies with the provisions of the Administrative Procedures Act, make periodic investigations of the rulemaking activities of all agencies and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

Added by Laws 1987, c. 207, § 19. Amended by Laws 1988, c. 292, § 18, emerg. eff. July 1, 1988.

§75-307.2. Repealed by Laws 1988, c. 292, § 22, emerg. eff. July 1, 1988.

§75-308. Review of proposed rules by Legislature - Approval or disapproval.

A. Upon receipt of any adopted rules, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign such rules to the appropriate committees of each such house of the Legislature for review. Except as otherwise provided by this section, upon receipt of such rules, the Legislature shall have thirty (30) legislative days to review such rules.

B. 1. By the adoption of a joint resolution, the Legislature may disapprove any rule, waive the thirty-legislative-day review period and approve any rule which has been submitted for review, or otherwise approve any rule.

2. a. (1) The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature or an emergency rule prior to such rule having the force and effect of law.

(2) Any such proposed rule or proposed amendment to a permanent rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section.

(3) Any such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such rule.

b. By adoption of a concurrent resolution, the Legislature may waive the thirty-legislative-day review period for any rule which has been submitted for review.

C. Unless otherwise authorized by the Legislature by concurrent resolution, or by law, whenever a rule is disapproved as provided in subsection B of this section, the agency adopting such rules shall not have authority to resubmit an identical rule, except during the first sixty (60) calendar days of the next regular legislative session. Any effective emergency rule which would have been superseded by a disapproved permanent rule shall be deemed null and void on the date the Legislature disapproves the permanent rule. Rules may be disapproved in part or in whole by the Legislature. Any resolution enacted disapproving a rule shall be filed with the Secretary for publication in "The Oklahoma Register".

D. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving or approving a rule shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule, and any such other direction or mandate regarding the rule deemed necessary by the Legislature. The resolution shall contain no other provisions.

E. 1. Except as provided by subsection F of this section, transmission of a rule for legislative review on or before April 1 of each year shall result in the approval of such rule by the Legislature if:

a. the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been submitted pursuant to Section 303.1 of this title, or

b. the Legislature has adjourned before the expiration of said thirty (30) legislative days of submission of such rules, and has failed to disapprove such rule.

2. After April 1 of each year, transmission of a rule for legislative review shall result in the approval of such rule by the Legislature only if the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted. In the event the Legislature adjourns before the expiration of such thirty (30) legislative days, such rule shall carry over for consideration by the Legislature during the next regular session and shall be considered to have been originally transmitted to the Legislature on the first day of said next regular session for review pursuant to this section. As an alternative, an agency may request direct legislative approval of such rules or waiver of the thirty-legislative-day review provided by subsection B of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

F. Any rule which establishes or increases fees or any rule by an agency, board, or commission created by or that receives its authority from Title 59 of the Oklahoma Statutes shall require approval by the Legislature by joint resolution. If the Legislature fails to approve the rule on or before the last day of the legislative session, the rule shall be deemed disapproved.

G. Prior to final adoption of a rule, an agency may withdraw a rule from legislative review. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in "The Oklahoma Register".

H. Except as otherwise provided by Sections 253, 250.4 and 250.6 of this title or as otherwise specifically provided by the Legislature, no agency shall promulgate any rule unless reviewed by the Legislature pursuant to this section. An agency may promulgate an emergency rule only pursuant to Section 253 of this title.

I. Any rights, privileges, or interests gained by any person by operation of an emergency rule, shall not be affected by reason of any subsequent disapproval or rejection of such rule by either house of the Legislature.

Added by Laws 1963, c. 371, § 8. Amended by Laws 1975, c. 289, § 1, emerg. eff. June 5, 1975; Laws 1978, c. 253, § 1, emerg. eff. May 1, 1978; Laws 1981, c. 48, § 1; Laws 1982, c. 18, § 1, emerg. eff. March 23, 1982; Laws 1987, c. 207, § 21; Laws 1988, c. 292, § 19, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 10, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 20, eff. July 1, 1991; Laws 1991, c. 326, § 10, eff. July 1, 1991; Laws 1992, c. 310, § 6, eff. July 1, 1992; Laws 1994, c. 384, § 9, eff. July 1, 1994; Laws 1995, c. 1, § 39, emerg. eff. March 2, 1995; Laws 1997, c. 206, § 20, eff. Nov. 1, 1997; Laws 1998, c. 239, § 14, eff. Nov. 1, 1998; Laws 2011, c. 59, § 2, eff. Nov. 1, 2011.

NOTE: Laws 1994, c. 182, § 4 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995.

§75-308.1. Expiration of legislative and gubernatorial review periods - Submission of adopted rules to Department of Libraries for publication.

A. Upon the approval by the Legislature and the Governor, or upon approval by joint resolution of the Legislature pursuant to subsection B of Section 308 of this title, a rule shall be considered finally adopted. The agency shall submit such finally adopted rule to the Secretary for filing and publishing such rule pursuant to Sections 251 and 255 of this title.

B. The text of the rule submitted for publication shall be the same as the text of the rule considered by the Legislature and the Governor.

Added by Laws 1987, c. 207, § 22. Amended by Laws 1988, c. 292, § 20, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 11, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 21, eff. July 1, 1991; Laws 1997, c. 206, § 21, eff. Nov. 1, 1997; Laws 1998, c. 239, § 15, eff. Nov. 1, 1998.

§75-308.2. Rules - Necessity of promulgation - Interpretations not to change - Prospective effect only - Limitation period on contest proceedings - Force of law and prima facie evidence.

A. No agency rule is valid or effective against any person or party, or may be invoked by the agency for any purpose, until it has been promulgated as required in the Administrative Procedures Act.

B. A proceeding to contest any promulgated rule on the ground of noncompliance with the procedural requirements of Article I of the Administrative Procedures Act must be commenced within two (2) years from the effective date of the promulgated rule.

C. Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.

Added by Laws 1987, c. 207, § 23. Amended by Laws 1991, c. 326, § 11, eff. July 1, 1991; Laws 1996, c. 225, § 4, eff. Nov. 1, 1996; Laws 1997, c. 206, § 22, eff. Nov. 1, 1997.

§75-308a. Jurisdiction.

The provisions of Article II of the Administrative Procedures Act govern the hearing procedures of agencies, and does not grant jurisdiction, not otherwise provided by law. The Legislature recognizes that agencies take actions and make decisions, other than by individual proceedings for which the right to judicial review is intended to be exercised pursuant to other laws.

Added by Laws 1992, c. 310, § 7, eff. July 1, 1992.

§75 309. Individual proceedings Notice Hearing.

A. In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved; and
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. Deliberations by administrative heads, hearing examiners, and other persons authorized by law may be held in executive session pursuant to paragraph 8 of subsection B of Section 307 of Title 25 of the Oklahoma Statutes.

E. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

F. The record in an individual proceeding shall include:

1. All pleadings, motions and intermediate rulings;
2. Evidence received or considered at the individual proceeding;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions;
6. Any decision, opinion, or report by the officer presiding at the hearing; and
7. All other evidence or data submitted to the hearing examiner or administrative head in connection with their consideration of the case provided all parties have had access to such evidence.

G. Oral proceedings shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the agency at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the agency, may be submitted to the reviewing court by the agency as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the reviewing court. In such case, the expense of transcriptions shall be taxed and assessed against the nonprevailing party. Parties to any proceeding may have the proceedings transcribed by a court reporter at their own expense.

H. Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record.

Added by Laws 1963, c. 371, § 9. Amended by Laws 1992, c. 310, § 8, eff. July 1, 1992; Laws 1994, c. 384, § 12, eff. July 1, 1994.

#### §75-310. Procedures before agency.

In individual proceedings:

1. Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications between husband and wife during the subsistence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his or her professional capacity in the course of discipline enjoined by the church to which he or she belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by a practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of a state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. Agencies may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;
3. A party may conduct cross-examinations required for a full and true disclosure of the facts;
4. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.
5. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.
6. A party may request the exclusion of witnesses to the extent and for the purposes stated in Section 2615 of Title 12 of the Oklahoma Statutes. Exclusion of a witness shall not be a violation of the Oklahoma Open Meeting Act.

Added by Laws 1963, c. 371, § 10. Amended by Laws 1999, c. 46, § 1, eff. Nov. 1, 1999.

§75-311. Proposed orders.

A. Except as otherwise provided by Section 311.1 of this title, if the administrative head of an agency has not heard the case or read the record of an individual proceeding, a final agency order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the administrative head who is to render the final agency order. The proposed order shall be accompanied by a statement of the reasons therefor and of each issue of fact or law necessary to the proposed order, prepared by the hearing examiner or by one who has read the record.

B. Such proposed order shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the administrative head is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.

C. The parties by written stipulation may waive compliance with this section.

Added by Laws 1963, c. 371, § 11. Amended by Laws 1992, c. 310, § 9, eff. July 1, 1992; Laws 1995, c. 317, § 1, emerg. eff. June 5, 1995; Laws 1998, c. 239, § 16, eff. Nov. 1, 1998.

§75-311.1. Department of Health - Final agency orders - Authority.

A. The Commissioner of the State Department of Health may delegate the authority to issue a final agency order adverse to a party to an agency administrative law judge if:

1. The administrative law judge has a general knowledge of the Public Health Code, and rules promulgated thereto;

2. The administrative law judge:

a. is currently licensed to practice law by the Supreme Court of this state,

b. has a working knowledge of the Administrative Procedures Act and administrative rules of the State Department of Health,

c. is not an owner, stockholder, employee or officer of, nor has any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the State Department of Health,

d. is separate and apart from the legal division or office of general counsel of the State Department of Health,

e. is not responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the State Department of Health, and

f. has not been engaged in the performance of investigative or prosecuting functions for the State Department of Health regarding the party receiving the final agency order; and

3. The Commissioner in delegating the authority to issue final agency orders adverse to a party pursuant to this section specifically designates by written agency policy and procedure the type or category of final agency order which may be issued by the administrative law judge.

B. The provisions of this section shall not be construed to authorize or allow restraints on the authority of the Commissioner to adopt, reject, review, modify or correct the findings of fact and conclusions of law or any proposed order issued by the administrative law judge.

C. When the administrative law judge issues a final agency order, that order becomes the final order of the State Department of Health without further proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of Title 75 of the Oklahoma Statutes or a filing for judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

Added by Laws 1995, c. 317, § 2, emerg. eff. June 5, 1995.

§75 312. Final agency orders - Contents - Notification.

A. A final agency order adverse to a party shall:

1. Be in writing; and
2. Include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the final agency order shall include a ruling upon each proposed finding.

B. Parties shall be notified either personally or by certified mail, return receipt requested, of any final agency order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

Laws 1963, c. 371, § 12; Laws 1992, c. 310, § 10, eff. July 1, 1992.

§75 313. Agency members not to communicate.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member (1) may communicate with other members of the agency, and (2) may have the aid and advice of one or more personal assistants.

Laws 1963, c. 371, § 13.

§75 314. Issuance or denial of new license - Revocation, suspension, annulment, withdrawal or nonrenewal of existing license.

A. Except as otherwise specifically provided by law, the issuance or denial of a new license shall not require an individual proceeding.

B. Except as otherwise prohibited by law, if a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any transfer of an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. In case the application for renewal or for a new license with reference to any transfer of an activity of a continuing nature is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the final agency order or a later date fixed by order of the reviewing court.

C. 1. Unless otherwise provided by law, an existing license shall not be revoked, suspended, annulled, withdrawn or nonrenewed unless, prior to the institution of such final agency order, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention or renewal of the license.

2. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Laws 1963, c. 371, § 14; Laws 1992, c. 310, § 11, eff. July 1, 1992.

§75-314.1. Implementation of emergency action pending final outcome of proceedings.

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted pursuant to this article.

Added by Laws 1994, c. 384, § 10, eff. July 1, 1994.

§75 315. Furnishing of information, attendance of witnesses and production of books, records, etc. Subpoenas.

A. 1. The agency conducting any individual proceeding shall have power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding.

2. The agency, or any party to a proceeding before it, may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by this act. Provided, however, all or any part of the deposition may be objected to at time of hearing, and may be received in evidence or excluded from the evidence by the agency or individual conducting the hearing in accordance with the law with reference to evidence in this act or with reference to evidence in courts of record under the law of the State of Oklahoma.

B. In furtherance of the powers granted by subsection A of this section, any agency, administrative head, hearing examiner or any other duly authorized member or employee thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall:

1. Issue subpoenas for witnesses;

2. Issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the marshal of the agency or by any person in any manner prescribed for the service of a subpoena in a civil action; or

3. Quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

C. 1. In case of disobedience to any subpoena issued and served under this section or to any lawful agency requirement for information, or of the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an agency, the agency may apply to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the court or the judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible.

2. If the disobedience or refusal is found to be unlawful, the court, or the judge, shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

Laws 1963, c. 371, § 15; Laws 1992, c. 310, § 12, eff. July 1, 1992.

§75 315.1. Public hearings Fees.

No agency shall charge a fee to any person wishing to submit evidence, views or arguments at any public hearing authorized by the Oklahoma Administrative Procedures Act concerning rules, regulations, licenses, permits, orders or any other proposed agency action. Nothing in this act shall be construed to prohibit the collection of any licensing or permit fees or other fees otherwise prescribed by statute.

Laws 1976, c. 60, § 1, emerg. eff. April 19, 1976.

§75-316. Disqualification of hearing examiner or agency member.

A hearing examiner or agency member shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing examiner or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with



particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the administrative head of the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing examiner, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the agency shall proceed with the proceeding if a quorum remains. If a quorum no longer exists, by virtue of the member's disqualification, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of Section 311 of this title shall apply.

Added by Laws 1963, c. 371, § 16. Amended by Laws 1997, c. 206, § 23, eff. Nov. 1, 1997; Laws 1998, c. 62, § 2, eff. Nov. 1, 1998.

#### §75 317. Rehearing, reopening or reconsideration of agency decision.

A. A final agency order issued by an administrative head of an agency shall be subject to rehearing, reopening or reconsideration by such administrative head. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final agency order within ten (10) days from the date of the entry of such final agency order. The grounds for such action shall be either:

1. Newly discovered or newly available evidence, relevant to the issues;
2. Need for additional evidence adequately to develop the facts essential to proper decision;
3. Probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the final agency order;
4. Need for further consideration of the issues and the evidence in the public interest; or
5. A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

B. The order of the agency granting rehearing, reconsideration or review, or the petition of a party therefor, shall set forth the grounds which justify such action.

C. Nothing in this section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

D. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a hearing examiner. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered.

E. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Laws 1963, c. 371, § 17; Laws 1992, c. 310, § 13, eff. July 1, 1992.

#### §75-318. Judicial review.

A. 1. Any party aggrieved by a final agency order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of this section and Sections 319, 320, 321, 322 and 323 of this title.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

B. 1. The judicial review prescribed by this section for final agency orders, as to agencies whose final agency orders are made subject to review, under constitutional or statutory provisions, by appellate proceedings in the Supreme Court of Oklahoma, shall be afforded by such proceedings taken in accordance with the procedure and under the conditions otherwise provided by law, but subject to the applicable provisions of Sections 319 through 324 of this title, and the rules of the Supreme Court.

2. In all other instances, proceedings for review shall be instituted by filing a petition, in the district court of the county in which the party seeking review resides or at the option of such party where the property interest affected is situated, naming as respondents only the agency, such other party or parties in the administrative proceeding as may be named by the petitioner or as otherwise may be allowed by law, within thirty (30) days after the appellant is notified of the final agency order as provided in Section 312 of this title.

C. Copies of the petition shall be delivered in person or mailed, postage prepaid, to the agency and all other parties of record, and proof of such delivery or mailing shall be filed in the court within ten (10) days after the filing of the petition. Any party not named as a respondent in the petition is entitled to respond within ten (10) days of receipt of service. The court, in its discretion, may permit other interested persons to intervene.

D. In any proceedings for review brought by a party aggrieved by a final agency order:

1. The agency whose final agency order was made subject to review may be entitled to recover against such aggrieved party any court costs, witness fees and reasonable attorney fees if the court determines that the proceeding brought by the party is frivolous or was brought to delay the effect of said final agency order.

2. The party aggrieved by the final agency order may be entitled to recover against such agency any court costs, witness fees, and reasonable attorney fees if the court determines that the proceeding brought by the agency is frivolous.

Laws 1963, c. 371, § 18; Laws 1977, c. 114, § 2, eff. Oct. 1, 1977; Laws 1992, c. 310, § 14, eff. July 1, 1992; Laws 2011, c. 189, § 1, eff. Nov. 1, 2011.

§75 319. Staying enforcement of agency decision pending review.

(1) The filing of a proceeding for review shall not stay enforcement of the agency decision; but the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper, and shall do so whenever required by subsection (2) of this section.

(2) In every proceeding in any court for the review of an order of an agency, upon the filing of an application, supported by verified statements of material fact establishing that the enforcement of the order pending final decision would result in present, continuous and irreparable impairment of the constitutional rights of the applicant, a stay of the enforcement of such order and of the accrual of penalties thereunder shall be entered upon the condition that:

(a) injury to adverse parties or to the public, as the case may be, can be obviated through the furnishing of security adequate to compensate for any loss which may be suffered as a result of the stay in the event the order is affirmed, in whole or in part;

(b) a supersedeas bond, in the amount and with sureties prescribed and approved by the reviewing court, in its sound judicial discretion, as adequate to meet requirement (a), be filed with such court. If an application for supersedeas hereunder, accompanied by a proposal for a supersedeas bond, is not acted upon by the court within forty five (45) days from the filing thereof, the order appealed from thereupon shall be automatically superseded and stayed, during the pendency of the appeal, upon the filing of the bond proposed in the application, provided, however, that the court thereafter may reasonably modify the terms of the supersedeas as to amount and surety whereupon the appellant shall comply with such modification in order to maintain the supersedeas in effect.

Laws 1963, c. 371, § 19.

§75-320. Transmission of record to reviewing court - Stipulations.

Within sixty (60) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing court, upon application for good cause shown, may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. For purposes of this section, "record" shall include such information as specified by Section 309 of this title. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs resulting therefrom. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

Laws 1963, c. 371, § 20; Laws 1992, c. 310, § 15, eff. July 1, 1992; Laws 2011, c. 189, § 2, eff. Nov. 1, 2011.

§75 321. Review without jury Additional testimony.

The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

Laws 1963, c. 371, § 21.

§75 322. Setting aside, modifying or reversing of orders Remand Affirmance.

(1) In any proceeding for the review of an agency order, proceeding for the review of an agency order, the Supreme Court or the district court, as the case may be, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the agency for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the agency findings, inferences, conclusions or decisions, are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in Section 10 of this act, including matters properly noticed by the agency upon examination and consideration of the entire record as submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the agency on question of fact; or

(f) arbitrary or capricious; or

(g) because findings of fact, upon issues essential to the decision were not made although requested.

(2) The reviewing court, also in the exercise of proper judicial discretion or authority, may remand the case to the agency for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.

(3) The reviewing court shall affirm the order and decision of the agency, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

Laws 1963, c. 371, § 22.

§75 323. Review of final judgment of a district or superior court by appeal to Supreme Court.

An aggrieved party, or the agency, without any motion for a new trial, may secure a review of any final judgment of a district or superior court under this act by appeal to the Supreme Court. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. An agency taking an appeal shall not be required to give bond.

Laws 1963, c. 371, § 23.

## AgPDES Rules

### Subchapter 1 - Agriculture Environmental Permitting and AGPDES

#### Part 1 - General Provisions

##### 35:44-1-1. Purpose and jurisdiction

(a) The rules in this Subchapter implement the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act, 2 O.S. §§ 2A-1 et seq. and 2A-21 et seq., and apply to applicants for and holders of Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) permits and other authorizations.

(b) Any facility that discharges as that term is defined in 2 O.S. § 2A-2 of the Oklahoma Agriculture Pollutant Discharge Elimination System Act that are within the Oklahoma Department of Agriculture, Food, and Forestry's areas of environmental jurisdiction pursuant to 27A O.S. § 1-3-101 (D) required by federal regulations to obtain a National Pollutant Discharge Elimination System (NPDES) permit or an authorization pursuant to a NPDES general permit shall be required to obtain an Agriculture Pollutant Discharge Elimination System (AgPDES) permit or an authorization pursuant to an AgPDES general permit.

(c) The Oklahoma Department of Agriculture, Food, and Forestry shall have the following areas of environmental responsibility except as provided in (d) of this subsection:

- (1) Point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
- (2) Pesticide control,
- (3) Forestry and nurseries,
- (4) Fertilizer,
- (5) Facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
- (6) Dairy waste and wastewater associated with milk production facilities,
- (7) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
- (8) Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
- (9) Development and promulgation of a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility, and
- (10) Storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

(d) The Department of Environmental Quality shall have environmental jurisdiction over:

- (1) Including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at the facilities,
- (A) Commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- (B) Slaughterhouses, but not including feedlots at these facilities, and
- (C) Aquaculture and fish hatcheries, and
- (2) Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

35:44-1-2. Incorporation by reference of federal regulations

(a) The following provisions of Title 40 of the Code of Federal Regulations and the requirements contained therein pertaining to the National Pollutant Discharge Elimination System are, unless otherwise specified, adopted and incorporated by reference in their entirety:

- (1) Part 3 (Electronic Reporting) in its entirety.
- (2) The following from Part 122 (NPDES Permit Regulations):
  - (A) 122.2 (definitions), excluding those definitions that are less stringent than the state of Oklahoma definitions found in Title 2 of the Oklahoma Statutes, Sections 2A-2 and 2A-22.
  - (B) 122.3 (exclusions).
  - (C) 122.4 (a), (b), (d), and (i) (prohibitions).
  - (D) 122.5 (b) and (c) (effect of a permit).
  - (E) 122.6 (continuation of expiring permits).
  - (F) 122.7 (b) and (c) (confidentiality of information).
  - (G) 122.21 (a)-(b), (e)-(i), (k), (m), (o), and (p) (application for permit).
  - (H) 122.22 (signatories to permit applications and reports).
  - (I) 122.23 (concentrated animal feeding operations).
  - (J) 122.26 (storm water discharges).
  - (K) 122.27 (a), and (b)(1) and (3) (silvicultural activities).
  - (L) 122.28 (general permits).
  - (M) 122.29 (new sources and new dischargers).
  - (N) 122.41 (conditions applicable to all permits).
  - (O) 122.42 (a) and (d)-(e) (additional conditions applicable to specified categories of NPDES permits).
  - (P) 122.43 (establishing permit conditions).
  - (Q) 122.44 (establishing limitations, standards, and other permit conditions).
  - (R) 122.45 (calculating NPDES permit conditions).
  - (S) 122.46 (duration of permits).
  - (T) 122.47 (schedules of compliance).
  - (U) 122.48 (requirements for recording and reporting of monitoring results).
  - (V) 122.50 (disposal of pollutants into wells, into publicly owned treatment works or by land application).
  - (W) 122.61 (transfer of permits).
  - (X) 122.62 (modification or revocation and reissuance of permits).
  - (Y) 122.63 (minor modifications permits).
  - (Z) 122.64 (termination of permits).
- (3) The following from Part 124 (Procedures and Decisionmaking):
  - (A) 124.2 (definitions).
  - (B) 124.3(a) (application for a permit).
  - (C) 124.5(a), and (c) - (d) (modification, revocation and reissuance, or termination of permits).
  - (D) 124.6(a), (c) - (e) (draft permits).
  - (E) 124.8 (fact sheet).
  - (F) 124.10(a)(1)(ii), (iii), and (iv), (b) - (e) (public notice of permit actions and public comment period).
  - (G) 124.11 (public comments and requests for public hearings).
  - (H) 124.12(a) (public hearings).
  - (I) 124.13 (obligation to raise issues and provide information during the public comment period).
  - (J) 124.15 (issuance and effective date of permit).
  - (K) 124.16 (stays of contested permit conditions).
  - (L) 124.17(a) and (c) (response to comments).
  - (M) 124.19 (appeal of RCRA, UIC, NPDES, and PSD permits).

- (N) 124.56 (fact sheets).
- (O) 124.59 (conditions requested by the Corps of Engineers and other government agencies).
- (P) 124.62 (decision on variances).
- (4) Part 125 (Criteria and Standards), Subparts A and D.
- (5) Part 412 (Effluent Limitations Guideline for Concentrated Animal Feeding Operations (CAFO) Point Source Category) in its entirety.
- (6) Part 450 (Construction and Development Point Source Category) in its entirety.
- (b) Narrative provisions of this subchapter control over any provision of regulations of the Environmental Protection Agency (EPA) adopted by reference and the rules are interpreted consistently with state compliance, with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.
- (c) Environmental Protection Agency Form 1 (general information for all applicants), Form 2b (concentrated animal feeding operations application), Form 2c (other applications), and the storm water construction activity Notice of Intent shall be incorporated by reference.

#### 35:44-1-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, 2011.

### Part 2 - The Process

#### 35:44-1-20. Compliance

Applicants and permittees are subject to the laws and rules pertaining to ODAFF as they exist on the date of filing an application.

#### 35:44-1-21. Filing an application

- (a) Tier I. The applicant shall file (2) copies of a Tier I application unless the application form or instructions specifies that only one (1) copy is needed.
- (b) Tier II and III. The applicant shall file three (3) copies of Tier II and Tier III applications with ODAFF and place one (1) copy for public review in the county in which the site, facility or activity is located.

#### 35:44-1-22. Fees

- (a) Fees shall be submitted with the application or notice of intent and, except as herein provided, shall not be refunded.
- (b) No fee shall be required for a notice of termination or a notice of change, other than change of permittee or co-permittee.
- (c) As of July 1, 2010, a request for a storm water construction waiver (rainfall erosivity) shall be:
  - (1) One hundred fifty dollars (\$150.00) for electronic submissions.
  - (2) Two hundred dollars (\$200.00) for paper submissions.
- (d) As of July 1, 2010, application fees for authorizations covered under a general permit shall be as follows:
  - (1) Renewal or change of permittee or co-permittee shall be seventy-five dollars (\$75.00) submitted electronically by e-permitting.
  - (2) Renewal or change of permittee or co-permittee shall be one hundred dollars (\$100.00) submitted by paper.
  - (3) New applications for authorizations covered under a general permit shall be three hundred fifty dollars (\$350.00).

- (4) Significant expansions of facilities covered under authorizations of existing general permits shall be three hundred fifty dollars (\$350.00).
- (5) The annual fee for an authorization covered under a general permit during the term of that permit shall be eight hundred dollars (\$800.00).
- (6) Storm water authorizations for construction sites of agriculture related activities shall be three hundred sixteen dollars (\$316.00).
- (e) As of July 1, 2010, individual permit application fees shall be as follows:
  - (1) Renewals of individual permits of existing facilities shall be three hundred fifteen dollars (\$315.00).
  - (2) New applications for individual new proposed facilities shall be three hundred fifty dollars (\$350.00).
  - (3) Annual fees for individual permittees during the term of the individual permit shall be one thousand two hundred and fifty dollars (\$1,250.00).
  - (4) In no case shall an individual permittee be required to pay an annual fee in the same fiscal year an application or renewal fee was paid.
- (f) To assist in meeting costs to the Department of the AgPDES program associated with permitting, the fees set out in this section may be adjusted on July 1st of each year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar.

#### 35:44-1-23. Receipt of applications

When an application and appropriate fee are received, each program shall:

- (1) File stamp the application with the date of receipt;
- (2) Assign the application to a permit reviewer; and
- (3) Enter this information in a database or log book.

#### 35:44-1-24. Administrative completeness review

The reviewer shall have sixty (60) calendar days from the file-stamped date of filing to determine if the application is administratively complete.

- (1) Not complete. If the reviewer decides that the application is not complete, ODAFF shall immediately send a Notice of Deficiencies to the applicant by mail, describing with reasonable specificity the deficiencies and requesting supplemental information. The reviewer may continue to ask for specific information until the application is administratively complete. If the reviewer does not notify the applicant of deficiencies, the period for technical review shall begin at the close of the administrative completeness review period.
- (2) Complete. When the application is administratively complete, the reviewer shall enter the date in the database or log book and immediately notify the applicant by mail. The period for technical review begins.

#### 35:44-1-25. Technical review

- (a) Each program shall have the time period specified in these rules to review each application for technical compliance with the relevant rules and to reach a final determination. If the data in the application does not technically comply with the relevant rules or law, the reviewer may notify the applicant by certified mail, describing with reasonable specificity the deficiencies and requesting supplemental information.
- (b) Any environmental permit that is not described in this Subchapter shall be reviewed with all due and reasonable speed.

#### 35:44-1-26. When review times stop

The time period for review stops during:

- (1) litigation;
- (2) public review and participation, including waiting periods, comment periods, public meetings, administrative hearings, ODAFF preparation of response to comments or review by state or federal agencies;
- (3) requests for supplemental information; and
- (4) the time in which an applicant amends the application of their own accord.

#### 35:44-1-27. Supplemental time

The Notice of Deficiencies and request for supplemental information may state that up to thirty (30) additional calendar days may be added to the application processing time. Requests for supplemental information may also state that additional days for technical review equal to the number of days the applicant used to respond may be added to the review time.

#### 35:44-1-28. Extensions

Extensions to the time lines shall only be made at the request of an applicant and at the discretion of the Department, except as provided in section 35:44-1-29 (2). Requests of applicants shall not be unnecessarily denied.

#### 35:44-1-29. Failure to meet deadline

Where failure to meet a deadline by the Department is imminent, then:

- (1) At least thirty (30) calendar days prior to the deadline ODAFF shall reassign staff or retain outside consultants to meet the deadline; or
- (2) The applicant may agree to an extension of time for a specific purpose and period of time with refund of the entire application fee, unless a refund is prohibited by law.

#### 35:44-1-30. Notices

(a) Statutory requirements for notice. The Agriculture Environmental Permitting Act requires an applicant to publish notice of filing a legal notice in one newspaper local to the proposed location or existing facility in accordance with 2 O.S. § 2A-25.

(b) Notice to landowner. Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.

(c) Notice content. The applicant shall provide ODAFF with a draft notice for approval prior to publication. All published legal notices shall contain the:

- (1) Name and address of the applicant;
- (2) Name, address and legal description of the site, facility and activity;
- (3) Purpose of notice;
- (4) Type of permit or permit action being sought;
- (5) Description of activities to be regulated;
- (6) Locations where the application may be reviewed;
- (7) Names, addresses and telephone numbers of contact persons for ODAFF and for the applicant;
- (8) Description of public participation opportunities and time period for comment and requests; and
- (9) Any other information required by ODAFF rules.

(d) Proof of publication. Within twenty (20) calendar days after the date of publication, an applicant shall provide ODAFF with a written affidavit of publication for each notice published. In case of a mistake in a published notice, ODAFF shall require a legal notice of correction or republication of the entire



notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

(e) Additional notice. Applicants for a NPDES permit are subject to additional notice provisions of federal requirements adopted by reference as ODAFF rules.

(f) Notices provided by ODAFF will include a fact sheet or statement of basis and the draft permit.

#### 35:44-1-31. Withdrawing applications

(a) By applicant. An applicant may withdraw an application at any time with written notice to ODAFF and forfeiture of fees.

(b) By ODAFF. Except for good cause shown, when an applicant fails to supplement an application within 180 calendar days after the mailing date of a Notice of Deficiencies, or by an agreed date, ODAFF shall void the application. ODAFF shall notify the applicant of an opportunity to show cause why this should not occur.

#### 35:44-1-32. Permit issuance or denial

(a) Compliance required. A new, modified or renewed permit or other authorization sought by the applicant shall not be issued until ODAFF has determined the application is in substantial compliance with applicable requirements of ODAFF laws and rules.

(b) Conditions for issuance. ODAFF may not issue a new, modified or renewed permit or other authorization sought by the applicant if:

(1) The applicant has not paid all monies owed to ODAFF or is not in substantial compliance with the ODAFF laws and rules and the terms of any existing ODAFF permits and orders. ODAFF may impose special conditions on the applicant to assure compliance and a separate schedule which ODAFF considers necessary to achieve required compliance; or

(2) Material facts were misrepresented or omitted from the application and the applicant knew or should have known of such misrepresentation or omission.

(c) Burden of persuasion. The applicant bears the burden of persuading ODAFF that the permit should issue. Title 75 O.S. § 307 is the appropriate mechanism to address any alleged failure by ODAFF to conform the issuance or denial of the permit to the requirements of a Final Order.

#### 35:44-1-33. Tier II and III modifications

For Tier II and III permit modification actions, only those issues relevant to the modifications shall be reopened for public review and comment.

#### 35:44-1-34. Permit decision-making authority

(a) Designated positions. The AgPDES Director may delegate duties in writing to qualified officials who meet the standards set in Title 2 of the Oklahoma Statutes, Sections 2A-4 and 2A-5 the power and duty to issue, renew, amend, modify and deny permits and take other authorization or registration action.

(b) Revision. The AgPDES Director may amend any delegated duties in writing.

#### 35:44-1-35. Pre-issuance permit review and correction

(a) Applicant review. ODAFF may ask an applicant to review its permit for calculation and clerical errors or mistakes of fact or law before the permit is issued.

(b) Correction. ODAFF may correct any permit before it is issued.

(1) Notice of significant corrections. For permits based on Tier II and III applications, an applicant shall publish legal notice in one newspaper local to the site of any correction or change proposed by ODAFF which significantly alters a facility's permitted size, capacity or limits.

(2) Comments. ODAFF shall open a public comment period and reconvene a public meeting and administrative hearing to receive public comments on the proposed significant corrections.

#### 35:44-1-36. Consolidation of permitting process

(a) Discretionary. Whenever an applicant applies for more than one permit for the same site, ODAFF may authorize, with the consent of the applicant, the review of the applications to be consolidated so that each required draft permit, draft denial, and proposed permit is prepared at the same time and public participation opportunities are combined.

(b) Scope. When consolidation is authorized by ODAFF:

(1) The procedural requirements for the highest specified tier shall apply to each affected application.

(2) ODAFF may also authorize the consolidation of public comment periods, process and public meetings, and administrative permit hearings.

(3) Final permits may be issued together.

(c) Renewal. ODAFF may coordinate the expiration dates of new permits issued to an applicant for the same facility or activity so that all permits are of the same duration.

(d) Multiple modifications. Subsections (a) and (b) of this section shall also apply to multiple Tier II and III applications for permit modifications.

### Part 3 - Tiers and Time Lines

#### 35:44-1-37. Water quality time lines, permit issuance, and permit application

(a) The Division shall technically review applications for Tier I, II, and III permits and issue or deny permits within 180 calendar days.

(b) Permits shall become effective within thirty (30) calendar days of notice of issuance.

(c) Prior to expiration of the permit, the permittee shall apply for a renewal or new authorization as follows:

(1) Ninety (90) calendar days for Tier I permits,

(2) One hundred eighty (180) calendar days for Tier II permits, or

(3) By the date specified in a new permit or upon submission of a notice of termination.

#### 35:44-1-38. Water quality applications - Tier I

The following water quality authorizations require Tier I applications:

(1) New, modified or renewed authorization under a general permit, except authorization pursuant to a concentrated animal feeding operations general permit.

(2) Transfer of discharge permit considered minor pursuant to 40 CFR 122.63(d).

(3) Minor modification of discharge permit or of an authorization pursuant to a general permit.

(4) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

#### 35:44-1-39. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) New individual discharge permit for small and medium concentrated animal feeding operations.

(2) Permit renewal or major modification for a facility with individual discharge permit, including concentrated animal feeding operation permits.

(3) New, modified or renewed general permit promulgation.

(4) New, major modification, or renewed authorization under a concentrated animal feeding operation general permit.

(5) Any new individual discharge permit for a non-major facility.

#### 35:44-1-40. Water quality applications - Tier III

A new individual discharge permit requires a Tier III application for any facility not already covered by Tier I or II, including a new large concentrated animal feeding operation or a new major discharge facility.

#### 35:44-1-41. Permit duration

- (a) Any permit issued pursuant to these rules shall not exceed a duration of five (5) years.
- (b) The conditions of an expired permit shall continue in force until the effective date of a new permit or until a notice of termination is submitted, whichever comes first.

### Subchapter 3 - Permit Conditions and Requirements

#### 35:44-3-1. Permit required

Any animal feeding operation required by federal regulations to obtain a National Pollutant Discharge Elimination System permit for concentrated animal feeding operations shall be required to obtain an Agriculture Pollutant Discharge Elimination System permit.

#### 35:44-3-2. Incorporation by reference of federal regulations

(a) The following provisions of Title 40 of the Code of Federal Regulations and the requirements contained therein pertaining to concentrated animal feeding operations are, unless otherwise specified, adopted and incorporated by reference in their entirety, except for those regulations noted in subsection (b):

- (1) The following from Part 122 (NPDES Permit Regulations):
  - (A) 122.21 (a)-(b), (e)-(f), (i), and (p) (application for permit).
  - (B) 122.23 (concentrated animal feeding operations).
  - (C) 122.28 (General permits).
  - (D) 122.42(e) (Conditions applicable to specified categories of permits).
- (2) Part 412 (Concentrated Animal Feeding Operations (CAFO) Point Source Category).
- (b) Any regulations incorporated by reference above that were invalidated by *Waterkeeper Alliance, Inc., et al. v. US Environmental Protection Agency*, 399 F.3d 486 (2nd Cir. 2005), shall not be incorporated by reference and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry.
- (c) Narrative provisions of this subchapter control over any provision of regulations of the Environmental Protection Agency (EPA) adopted by reference and the rules are interpreted consistently with state compliance, with the requirements of 40 C.F.R. Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

#### 35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, 2011.

#### 35:44-3-4. Terms and conditions of permits

- (a) Terms and conditions of permits issued under this Chapter shall include requirements necessary to assure compliance with the Oklahoma Water Quality Standards, the Implementation of Oklahoma's Water Quality Standards, and the ODAFF Water Quality Standards Implementation Plan.

(b) Where practicable and as deemed appropriate by the AgPDES Director and as applicable in the circumstances, any discharge permit, or authorization to discharge issued by the Director under a General Permit, may contain appropriate terms, conditions, limitations and requirements related to protection of groundwater, for remediation of pollution, or for implementation of other programs under the jurisdiction of the ODAFF.

#### 35:44-3-5. Technology-based methodologies

Effluent limitation guidelines for industry categories and pollutants are promulgated by the EPA pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in OAC 35:44-1-2. If there are no industry category or pollutant guidelines applicable to the applicant's industry, Best Professional Judgment of the permit writer applies.

#### 35:44-3-6. Water quality review

(a) The provisions of "Quality Criteria for Water, 1986", United States Environmental Protection Agency, EPA 440/5-86-001, as amended, are incorporated herein by reference and shall be consulted where Oklahoma's Water Quality Standards do not contain a specific criterion on a particular pollutant and a criterion is necessary to protect a designated beneficial use.

(b) In all cases, where appropriate, to ensure that beneficial uses of receiving waters are protected or when deemed necessary to establish waste load allocations of dischargers to a stream, the AgPDES Director shall require the applicant to perform and submit to ODAFF appropriate stream studies and water quality modeling. If resources allow, ODAFF may conduct stream studies and modeling.

#### 35:44-3-7. Water Quality Standards Variance

Approval for any variance allowed pursuant to the Oklahoma Water Quality Standards shall be obtained directly from the Oklahoma Water Resources Board and the permittee or applicant shall submit written evidence of the variance to the AgPDES Director in a timely manner.

#### 35:44-3-8. Technical Standards

(a) The contents of the manure management plan for a concentrated animal feeding operation shall be based on the nutrient management plan standards prepared in the Agricultural Waste Management Field Handbook, published by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS).

(b) Manure or animal waste shall be applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in manure or animal waste in compliance with the best management practices of the most current USDA NRCS-Oklahoma Waste Utilization Standard Code 633 and Conservation Practice Standard for Nutrient Management Code 590, and the Midwest Plan Service Publication 18, Livestock Waste Facilities Handbook.

(c) This section is promulgated to meet the requirements of 40 CFR 412.4(c)(2).

Oklahoma Agriculture Pollutant Discharge Elimination System Act and Oklahoma Agriculture  
Environmental Permitting Act

§2-2A-1. Short title - Purpose - Applicability - Water programs.

A. Sections 2 through 11 of this act shall be known and may be cited as the “Oklahoma Agriculture Pollutant Discharge Elimination System Act”.

B. The purpose of the Oklahoma Agriculture Pollutant Discharge Elimination System Act is to:

1. Implement the federal National Pollutant Discharge Elimination System requirements;
2. Assist the Oklahoma Department of Agriculture, Food, and Forestry in obtaining authorization to implement the federal Clean Water Act programs; and
3. Issue permits to the persons or organizations owning or operating facilities regulated within the areas of environmental jurisdiction of the Department.

C. The provisions contained in the Oklahoma Agriculture Pollutant Discharge Elimination System Act shall only apply to those programs established pursuant to the environmental jurisdiction of the Department as stated in Section 1-3-101 of Title 27A of the Oklahoma Statutes.

D. Water programs within the environmental jurisdiction of the Department are hereby established that shall be responsible for:

1. Water quality including, but not limited to, point source and nonpoint source pollution;
2. Water protection; and
3. Discharges and potential discharges to waters of the state.

Added by Laws 2005, c. 292, § 2, eff. July 1, 2005.

§2-2A-2. Definitions.

As used in the Oklahoma Agriculture Pollutant Discharge Elimination System Act:

1. “Administrative hearing”, “administrative permit hearing”, “enforcement hearing” and “administrative enforcement hearing” mean a quasi-judicial individual proceeding, held by the Oklahoma Department of Agriculture, Food, and Forestry, when authorized by the provisions of the Oklahoma Agricultural Code, and conducted pursuant to:
  - a. the Administrative Procedures Act,
  - b. the Oklahoma Agricultural Code, and
  - c. rules promulgated thereunder;
2. “Administrative Procedures Act” means the Oklahoma Administrative Procedures Act;
3. “Director” means the individual appointed by the Commissioner to perform the duties identified in Section 6 of this act;
4. “Discharge” includes, but is not limited to, a discharge of a pollutant or pollutants and means any addition of any pollutant to waters of the state from any point or nonpoint source regulated by the Department within its areas of environmental jurisdiction;
5. “Disposal system” means pipelines or conduits, pumping stations and force mains, and all other devices, construction, appurtenances, and facilities used for collecting, conducting, or disposing of wastewater and treatment systems;
6. “Effluent limitation” means any established restriction imposed by the Department on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of the state and includes schedules of compliance;
7. “Environment” includes the air, land, wildlife, and waters of the state;
8. “Formal public meeting” means a formal public forum, held by the Department when authorized by the provisions of the Oklahoma Agricultural Code, and conducted by a presiding officer pursuant to the requirements of the Oklahoma Agricultural Code and rules promulgated thereunder, at which an opportunity is provided for the presentation of oral comments made and written views submitted

within reasonable time limits as determined by the presiding officer. Public meeting shall mean a "public hearing" when held pursuant to requirements of the Code of Federal Regulations or the Oklahoma Agriculture Pollutant Discharge Elimination System Act. A public meeting shall not be a quasi-judicial proceeding;

9. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well-defined and includes, but is not limited to, agricultural storm water runoff and return flows from irrigated agriculture;

10. "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants or wastes are or may be discharged and which is within the Department's environmental jurisdiction. The term "point source" shall not include agricultural storm water discharges and return flows from irrigated agriculture;

11. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into waters of the state;

12. "Pollution" means the presence or the release in the environment of any substance, contaminant or pollutant, any other alteration of the physical, chemical or biological properties of the environment, the release of any liquid, gaseous or solid substance into the environment:

- a. in quantities which are or will likely create a nuisance, or
- b. in quantities which render or will likely render the environment harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

13. "Schedule of compliance" means a schedule of remedial measures including, but not limited to, an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

14. "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

15. "Storm water" means rainwater runoff, snow melt runoff, and surface runoff and drainage;

16. "Treatment works" means any facility within the Department's jurisdictional areas of environmental responsibility, as specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes used for the purpose of treating or stabilizing waste or waste water that does not discharge directly to a publicly owned treatment works; and

17. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the federal Clean Water Act or promulgated rules, are not waters of the state.

Added by Laws 2005, c. 292, § 3, eff. July 1, 2005.

§2-2A-3. Authority of Board to promulgate rules - Powers of Department.

A. The State Board of Agriculture shall have the power and duty to promulgate rules implementing and effectuating the Oklahoma Agriculture Pollutant Discharge Elimination System Act. The rules may

incorporate by reference any applicable rules, regulations, and policies of the United States Environmental Protection Agency adopted under the federal Clean Water Act. Any rules shall be at least as stringent as the United States Environmental Protection Agency regulations and policies, including, but not limited to, rules that:

1. Allow the inclusion of technology-based effluent limitations and require water-quality-related effluent limitations in Agriculture Pollutant Discharge Elimination System permits to the extent necessary to protect the designated and existing beneficial uses of the waters of the state and to comply with the requirements of the federal Clean Water Act;
2. Apply applicable national standards of performance promulgated pursuant to Section 306 of the federal Clean Water Act in establishing terms and conditions of Director-issued permits;
3. Develop or assist in development of any effluent limitation or other limitation, prohibition, or effluent regulation;
4. Ensure that the public and any other state whose waters may be affected receive notice of each application for a discharge permit;
5. Ensure that any state whose waters may be affected by the activities allowed by a proposed permit may submit written recommendations on the application to the Department. The rules shall provide that if the recommendations or any parts thereof are not incorporated, the Department will notify the affected state in writing and shall provide the reasons therefor;
6. Establish a fee schedule to implement the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act;
7. Establish management standards for sludge which are no less stringent than applicable federal regulations; and
8. Establish procedures and requirements necessary to ensure compliance with applicable federal laws.

B. The Department shall have authority to:

1. Require the owner or operator of any system for the treatment, storage, discharge, or transport of pollutants to:
  - a. establish, maintain, and submit plans, specifications, records, and other data relative to disposal systems or any part thereof, in connection with the issuance of discharge permits or in connection with any permit, purposes, or requirements of the Oklahoma Agriculture Pollutant Discharge Elimination System Act,
  - b. make reports, to install, calibrate, use, and maintain monitoring equipment or methods including biological monitoring methods,
  - c. take samples of effluents in the manner as may be prescribed, and
  - d. provide other information as may be reasonably required;
2. Take all actions that may be necessary or incidental to implement and maintain a pollutant discharge permit program and sludge program, including the authority to assume and obtain authorization to implement and maintain a portion of the National Pollutant Discharge Elimination System state permit program and a state sludge program pursuant to Section 402 and other provisions of the federal Clean Water Act and other applicable federal law. The Director may issue permits for the discharge of pollutants and storm water from facilities and activities within the areas of environmental jurisdiction of the Department specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes;
3. Take necessary and appropriate actions to revoke, modify, refuse to renew, suspend, place on probation, reinstate, or otherwise administer and enforce discharge permits and sludge permits issued by the United States Environmental Protection Agency which are transferred to the Department upon federal authorization of the Agriculture Pollutant Discharge Elimination System program of the Department; and
4. Exercise all necessary incidental powers which are necessary and proper to carry out the purposes of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and to comply with the

requirements of the federal Clean Water Act and the requirements of the United States Environmental Protection Agency regulations promulgated thereunder.

Added by Laws 2005, c. 292, § 4, eff. July 1, 2005.

§2-2A-4. Disclosure of interest in regulated entities.

Any employee of the Oklahoma Department of Agriculture, Food, and Forestry in a technical, supervisory or administrative position relating to the review, issuance, or enforcement of permits pursuant to the Oklahoma Agricultural Code who is an owner, stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department shall disclose the interest to the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry. Disclosures shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This section shall not apply to financial interests occurring by reason of participation of an employee in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

Added by Laws 2005, c. 292, § 5, eff. July 1, 2005.

§2-2A-5. Director of the Agricultural Pollutant Discharge Elimination System.

A. The Commissioner of Agriculture shall appoint the Director of the Agriculture Pollutant Discharge Elimination System. The Director shall serve at the pleasure of the Commissioner.

B. The Director shall have experience in agriculture, forestry, conservation, environmental sciences, or other areas as may be required by the Commissioner.

C. The Director shall not be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department and, with regard to the exercise of powers and duties associated with the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall meet all requirements of Section 304 of the federal Clean Water Act and applicable federal regulations promulgated thereunder by the United States Environmental Protection Agency regarding conflict of interest.

D. 1. The Director shall have the power and duty to:

a. issue, deny, modify, amend, renew, refuse to renew, suspend, place on probation, reinstate or revoke licenses or permits pursuant to the provisions of the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture, and

b. issue final orders and assess administrative penalties according to the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the Board.

2. The powers and duties specified in paragraph 1 of this subsection shall be exercised exclusively by the Director on behalf of the Oklahoma Department of Agriculture, Food, and Forestry and may not be delegated to other employees of the Department except as specifically provided in the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

3. In the event of the temporary absence of the Director, the Director may delegate the exercise of these powers and duties to an acting director during the absence of the Director subject to an organizational structure approved by the Commissioner. In the event of a vacancy in the position of Director, the Commissioner may designate an interim or acting Director who is authorized to exercise the powers and duties until a permanent Director is employed.

4. Any designee exercising the powers and duties of the Director as authorized or on a temporary, acting, or interim basis shall meet the requirements of subsection C of this section for the Director.

5. All references in the Oklahoma Agricultural Code to the Department with respect to the exercise of the powers and duties specified in paragraph 1 of this subsection shall mean the exercise of such powers and duties by the Director or authorized designee.



Added by Laws 2005, c. 292, § 6, eff. July 1, 2005.

§2-2A-6. Discharge of pollutant into state waters - Schedule of compliance and conditions - Permits.

A. It shall be unlawful for any person regulated by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to its environmental jurisdiction to discharge any pollutant into waters of the state except in accordance with a permit from the Director of the Agriculture Pollutant Discharge Elimination System.

B. Prior to issuing the pollutant discharge permits, the Director shall prescribe schedules of compliance and conditions as necessary that:

1. Prevent, control, or abate pollution, including water quality-related and technology-based effluent limitations as are necessary to protect the water quality and existing and designated beneficial uses of the waters of the state;
2. Require application of best practicable control technology currently available, best conventional pollutant control technology, or best available technology economically achievable, or other limitations as the Director may prescribe;
3. Require compliance with national standards of performance and toxicity;
4. Set limitations or prohibitions designed to prohibit the discharge of pollutants;
5. Set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality;
6. Set terms and conditions for sludge and land application of wastewater and for impoundments in accordance with rules promulgated by the Board; and
7. Comply with the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the requirements of the federal Clean Water Act.

C. The Director shall:

1. Have authority to issue individual permits and authorizations under general permits for pollutants, storm water and sludge as authorized by the Oklahoma Agriculture Pollutant Discharge Elimination System Act;
2. Issue permits for fixed terms not to exceed five (5) years;
3. Have the authority to require conditions in permits issued for facilities subject to the environmental jurisdiction of the Department requiring the permittee to give notice to the Department of:
  - a. new introductions into the treatment works of pollutants at a regulated facility from any source which would be a new source as defined in Section 306 of the federal Clean Water Act,
  - b. pollutants being introduced from a source which would be a point source subject to Section 301 of the federal Clean Water Act if it were discharging directly to waters of the state,
  - c. a substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the works at the time of issuance of the permit, or
  - d. other conditions as may be required under the federal Clean Water Act or state law;
4. Have the authority to ensure compliance with Sections 204(b), 307 and 308 and other provisions of the federal Clean Water Act and with other applicable federal law;
5. Have all necessary and incidental authority to comply with the requirements of the federal Clean Water Act and requirements of the United States Environmental Protection Agency set forth in duly promulgated federal regulations adopted under the federal Clean Water Act;
6. Have the authority to terminate or modify permits issued by the Director for cause, including but not limited to:
  - a. violation of any condition of the permit, including but not limited to conditions related to limits, monitoring requirements, entry, and inspections,
  - b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or

- c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
  - 7. Have all necessary authority to implement and enforce Department programs and requirements established by the State Board of Agriculture in duly promulgated rules;
  - 8. Have all necessary or incidental authority to investigate and abate violations of permits issued by the Director, violations of administrative orders, violations of duly promulgated rules, and violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and
  - 9. Have all necessary and incidental authority to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms, and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection, and sampling.
- Added by Laws 2005, c. 292, § 7, eff. July 1, 2005.

§2-2A-7. Inspection of and access to permitted and unpermitted facilities - Issuance of discharge permit prohibited in certain situations - Documents open to public - Trade secrets protected.

A. Any holder of a permit or applicant for a permit shall be deemed to have given consent to any authorized officer, employee, or agent of the Oklahoma Department of Agriculture, Food, and Forestry to:

1. Enter and inspect the facility in accordance with the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act;
2. Investigate complaints;
3. Have access at any reasonable time for the purposes of reviewing and copying any records required to be maintained;
4. Inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required;
5. Have access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site; and
6. Obtain copies of records, plans, reports, or other information required by the Department to be submitted upon request and subject to and made available for inspection at reasonable times to any authorized representative of the Department. Any authorized representative of the Department may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by permit, order, or duly promulgated rules of the Board.

B. For unpermitted facilities, authorized employees or representatives, upon presentation of a credential and, if necessary, a proper warrant shall have:

1. A right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;
2. A right of entry for the purpose of investigating complaints;
3. Access, at any reasonable time, for the purposes of reviewing and copying any records required to be maintained;
4. Authority to inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required; and
5. Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site.

C. The Director shall not issue a discharge permit if the permit:

1. Would authorize the discharge of a radiological, chemical, or biological warfare agent, or high-level radioactive waste;

2. Would result, in the judgment of the United States Secretary of the Army acting through the Chief of Engineers, in the substantial impairment of anchorage and navigation of any waters of the United States as those waters are defined in the federal Clean Water Act;

3. Is objected to in writing by the Administrator of the United States Environmental Protection Agency or designee, pursuant to any right to object which is granted to the Administrator under Section 402(d) of the federal Clean Water Act; or

4. Would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the federal Clean Water Act.

D. 1. Any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the record, report, or information, or particular portion, shall be considered confidential in accordance with the purposes of the federal Uniform Trade Secrets Act.

2. Nothing in this section shall prohibit the Department or an authorized representative of the Department including, but not limited to, any authorized contractor, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal law under their respective jurisdictions or within their respective authorities.

3. Any records, reports, or information required to be submitted for permitting, compliance, or review that would not be considered confidential by the Environmental Protection Agency shall not be kept confidential pursuant to this subsection.

E. 1. The Board shall promulgate standard precautions for the prevention of the transmission of communicable diseases to humans and animals to be used when inspecting animal feeding operations.

2. Except for emergency situations or when enforcement of a permit requires the use of the standard precautions, Department employees shall observe the health standards and sanitary requirements of the facility.

Added by Laws 2005, c. 292, § 8, eff. July 1, 2005.

#### §2-2A-8. Rules for storm water discharges.

The State Board of Agriculture shall promulgate rules which prescribe permit requirements applicable to discharges composed entirely of storm water that shall at a minimum meet federal law. The rules may require permits on a case-by-case basis, exempt categories of discharges, or provide a schedule for obtaining the permit. The Board shall have promulgated rules for storm water discharges which comply with Environmental Protection Agency requirements for approval of the state National Pollutant Discharge Elimination Systems program no later than the date that the Department is to receive authorization to administer a state National Pollutant Discharge Elimination System program.

Added by Laws 2005, c. 292, § 9, eff. July 1, 2005.

#### §2-2A-9. Violations of act, permit, rule or order - Recovery of damages - Right of intervention - Notice - Hearings - Penalties - Review.

A. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, any permit, any rule, or any order of the Director of the Agriculture Pollutant Discharge Elimination System, the Director shall have the authority and powers to proceed as specified in the Administrative Procedures Act unless otherwise provided herein. However, provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for seeking action in the district court as

provided by the Oklahoma Agriculture Pollutant Discharge Elimination System Act or other applicable provisions of law.

B. The Oklahoma Agriculture Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect the right of a person to recover damages for pollution that are otherwise allowed by law in a court of competent jurisdiction.

C. Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any health, environmental, pecuniary, or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

D. Whenever, on the basis of any information available, the Department finds that any person regulated by the Department is in violation of any act, rule, order, permit, condition or limitation implementing the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any previously issued discharge permit, the Director may issue an order requiring the person or entity to comply with the provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. Provided, however, the issuance of a compliance order or denial, placing on probation, reinstatement, suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil, or criminal proceeding.

E. 1. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of the order shall be served on any appropriate individual officers or service agents.

2. Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the Director may be served in any manner allowed by Oklahoma Rules of Civil Procedure applicable to a civil summons.

F. 1. Whenever on the basis of any information available the Director finds that any person regulated by the Department has violated any of the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any permit, rule, order or condition or limitation implementing any of these sections, or previously issued discharge permit or related order, the Director may assess, after providing notice and opportunity for an enforcement hearing to the alleged violator, an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation.

2. The total amount of the administrative fine shall not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00) per violation. In determining the amount of any penalty assessed under this subsection, the Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefit savings, if any, resulting from the violation, and any other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

G. 1. The Director is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the Director is authorized to issue a compliance order under subsection D of this section.

2. Any person who violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, any permit condition or limitation implementing any of such provisions in a permit issued under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, and any person who violates any order issued by the Director under subsection D of this section, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation.

3. In determining the amount of the civil penalty, the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and any other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

4. Any action pursuant to this subsection may be brought in the district court for the district in which the property or defendant is located or defendant resides or is doing business, and the court shall have jurisdiction to restrain any violation and to require compliance.

5. The prior revocation of a permit shall not be a condition precedent to the filing of a civil action under the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

H. 1. Any person who violates any provision of this act, any order of the Director, or any condition or limitation in a permit issued pursuant to this act may be punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Ten Thousand Dollars (\$10,000.00) per day for each violation, or by imprisonment for not more than six (6) months for each violation, or both.

2. Any person who knowingly makes any false material statement, representation, or certification in, omits material data from, or tampers with any application, notice, record, report, plan, or other document filed or required to be maintained under the Oklahoma Agriculture Pollutant Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall be punishable, upon conviction, by a fine of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation, or by imprisonment for not more than two (2) years, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be by a fine of not more than Twenty Thousand Dollars (\$20,000.00) per day for each violation, or by imprisonment for not more than four (4) years, or by both. In addition, the Director shall deny issuance of the permit or require submission of a new application.

3. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

I. 1. Whenever, on the basis of information available, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or any requirement, rule, permit, or order issued under this act, the Department shall notify the owner or operator of the treatment works of the violation.

2. If the operator of the treatment works does not commence appropriate enforcement action within thirty (30) days of the date of the notification, the Department may commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction, against the owner or operator of the treatment works.

3. In the civil action, the Department shall join the operator of the source as a party to the action.

4. The action shall be brought in the district court in the county in which the treatment works is located.

5. The court shall have jurisdiction to restrain the violation and to require the operator of the treatment works and the operator of the source to take any action as may be necessary to come into compliance with the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

6. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

J. 1. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of the order by filing a petition for review in district court pursuant to the Oklahoma Administrative Procedures Act. The court shall not impose additional civil penalties for the same violation unless the assessment of the penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

2. If any person fails to pay an assessment of an administrative penalty:

- a. after the order making the assessment has become final, or
- b. after a court in an action brought under paragraph 1 of this subsection has entered a final judgment in favor of the Department, as the case may be,

a civil action may be brought in an appropriate district court to recover the amount assessed plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be. In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to the amount and interest, attorney fees and costs for the collection proceeding and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of the penalties of the person and nonpayment penalties which are unpaid as of the beginning of the quarter.

K. 1. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this act, any rule, any order of the Director, or any condition or limitation in a permit issued pursuant to this act.

2. Any action for injunctive relief to redress or restrain a violation of any person of a provision of this act, any rule, any order of the Director, or any condition or limitation in a permit issued pursuant to this act or recovery of any administrative or civil penalty assessed may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma,
- b. the Attorney General on behalf of the State of Oklahoma, or
- c. the Department on behalf of the State of Oklahoma.

3. It shall be the duty of the Attorney General and district attorney if requested by the Director to bring such action.

Added by Laws 2005, c. 292, § 10, eff. July 1, 2005.

§2-2A-10. Application for permit - Compliance with local ordinances, rules or requirements.

A. For permits or other authorizations required pursuant to the Oklahoma Agricultural Code, applicants shall file applications in the form and manner established by the Oklahoma Department of Agriculture, Food, and Forestry. The Department shall review the applications as filed and subsequently amended or supplemented. Any permit issued or authorization granted may include conditions.

B. Permits and other authorizations required pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act may contain provisions requiring that operations shall be in compliance with municipal and other local government ordinances, rules, and requirements. A determination or certification that the operations under the requested permit or authorization conform or comply with those ordinances, rules, or requirements, the enforcement of which is not within the jurisdiction or authority of the Department, shall not be considered by the Department in its review and approval or denial of a permit or authorization.

Added by Laws 2005, c. 292, § 11, eff. July 1, 2005.

§2-2A-21. Short title.

Sections 12 through 20 of this act shall be known and may be cited as the "Oklahoma Agriculture Environmental Permitting Act".

Added by Laws 2005, c. 292, § 12, eff. July 1, 2005.

§2-2A-22. Definitions.

For the purposes of the Oklahoma Agriculture Environmental Permitting Act:

1. "Application" means a document or set of documents, filed with the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of receiving a permit or the modification, amendment, or renewal thereof from the Department. The term "application" includes any subsequent additions, revisions, or modifications submitted to the Department that supplement, correct, or amend a pending application;
2. "Draft permit" means a draft document prepared by the Department after it has found a Tier II or III application for a permit to be administratively and technically complete and that the application may warrant the issuance, modification, or renewal of the permit;
3. "Permit" means a permission required by law and issued by the Department, the application for which has been classified as Tier I, II, or III by the State Board of Agriculture. The term "permit" includes but is not limited to:
  - a. specific types of permits and other Department authorizations including certifications, registrations, licenses, and plan approvals,
  - b. general permits and notices of intent for coverage by a general permit, and
  - c. an approved variance from a promulgated rule; however, for existing facilities the Department may require additional notice and public participation opportunities for variances posing the potential for increased risk;
4. "Process meeting" means a meeting open to the public which is held by the Department to explain the permitting process and the public participation opportunities applicable to a specific Tier III application;
5. "Proposed permit" means a document, based on a draft permit and prepared by the Department after consideration of comments received on the draft permit, that indicates the decision of the Department to issue a final permit pending the outcome of an administrative permit hearing, if any;
6. "Qualified interest group" means any organization with twenty-five or more members who are Oklahoma residents;
7. "Response to comments" means a document prepared by the Department after its review of timely comments received on a draft denial or draft permit pursuant to public comment opportunities which:
  - a. specifies any provisions of the draft permit that were changed in the proposed or final permit and the reasons for the changes, and
  - b. briefly describes and responds to all significant comments raised during the public comment period or any hearing regarding the draft denial or draft permit;
8. "Tier I" means a basic process of permitting that includes application, notice to the landowner, and Department review. For the Tier I process, a permit shall be issued or denied by a technical supervisor of the reviewing Division or local representative of the Department provided the authority has been delegated by the Director;
9. "Tier II" means a process of permitting which includes:
  - a. the Tier I process,
  - b. published notice of application filing,
  - c. preparation of the draft permit or draft denial,
  - d. published notice of the draft permit or draft denial and opportunity for a formal public meeting,and

e. public meeting, if any.

For the Tier II process, a permit shall be issued or denied by the supervisor of the reviewing Division provided the authority has been delegated thereto by the Director; and

10. "Tier III" means an expanded process of permitting which includes:

a. (1) the Tier II process, except the notice of filing, shall also include an opportunity for a process meeting,

(2) preparation of the response of the Department to comments, and

(3) denial of application, or

b. preparation of a proposed permit, the published notice of availability of the proposed permit and the response to comments and of the opportunity for an administrative permit hearing, and an administrative permit hearing, if any.

For the Tier III process, a permit shall be issued or denied by the Director.

Added by Laws 2005, c. 292, § 13, eff. July 1, 2005.

§2-2A-23. Rules designating application tiers.

A. The State Board of Agriculture shall have the authority to promulgate rules to implement the Oklahoma Agriculture Environmental Permitting Act for each tier that will to the greatest extent possible:

1. Enable applicants to follow a consistent application process;

2. Ensure that uniform public participation opportunities are offered;

3. Provide for uniformity in notices required of applicants; and

4. Set forth procedural application requirements.

B. The rules shall designate applications as Tier I, II, or III and shall at a minimum be consistent with federal law. In making these determinations, the Board shall consider information and data offered on:

1. The significance of the potential impact of the type of activity on the environment;

2. The amount, volume, and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted, or land applied;

3. The degree of public concern traditionally connected with the type of activity;

4. The federal classification, if any, for the proposed activity, operation, or type of site or facility; and

5. Any other factors relevant to the determinations.

C. For purposes of this section, the Board shall ensure that designations are, at a minimum, consistent with any analogous classifications set forth in applicable federal programs.

D. The rules for each tier shall:

1. Set forth uniform procedures for filing an application;

2. Contain specific uniform requirements for each type of notice and public participation or hearing opportunities required by the Oklahoma Agriculture Environmental Permitting Act;

3. Contain other provisions needed to implement and administer the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and

4. Designate positions to which the Director may delegate, in writing, the power and duty to issue, renew, amend, modify, and deny permits.

Added by Laws 2005, c. 292, § 14, eff. July 1, 2005.

§2-2A-24. Powers and duties of Department.

A. The Oklahoma Department of Agriculture, Food, and Forestry is hereby authorized to implement and enforce the provisions of the Oklahoma Agriculture Environmental Permitting Act and rules promulgated thereunder.

B. In addition to authority under the Oklahoma Agricultural Code, the Department shall have the power and duty to:



1. Evaluate applications for administrative and technical completeness pursuant to requirements of the Oklahoma Agricultural Code and rules promulgated thereunder and, when necessary to determine the completeness, request changes, revisions, corrections, or supplemental submissions;
  2. Evaluate notices related to applications for sufficiency of content and compliance and require that omissions or inaccuracies be cured;
  3. Consider timely and relevant comments received;
  4. Prepare responses to comments, draft and final denials, and draft, proposed, and final permits;
  5. Cooperate with federal agencies;
  6. Consolidate processes related to multiple, pending applications filed by the same applicant for the same facility or site in accordance with rules of the State Board of Agriculture; and
  7. Otherwise exercise all incidental powers as necessary and proper to implement the provisions of the Oklahoma Agriculture Environmental Permitting Act and promulgate rules.
- Added by Laws 2005, c. 292, § 15, eff. July 1, 2005.

§2-2A-25. Tier II or III applications - Publication of notice of filing - Process meeting on Tier III applications.

- A. Upon filing a Tier II or III application with the Oklahoma Department of Agriculture, Food, and Forestry, the applicant shall publish notice of the filing as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. The publication shall identify public locations where the application may be reviewed, including a public location in the county where the proposed new site or existing facility is located.
  - B. For Tier III applications, the publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, a process meeting on the permitting process. If the Department receives a timely request and determines that a significant degree of public interest in the application exists pursuant to rules of the Department, it shall schedule and hold the meeting. The applicant shall be entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting regarding the proposed facility or activity for which a permit is sought that is scheduled and held by the applicant may be combined, with the agreement of the Department and the applicant, with the process meeting authorized by this paragraph.
  - C. The provisions of this section shall not stay the review of the application by the Department.
- Added by Laws 2005, c. 292, § 16, eff. July 1, 2005.

§2-2A-26. Tier II or III applications - Draft denial or permit.

- A. Upon conclusion of its technical review of a Tier II or III application within the permitting timeframes established by rules promulgated by the State Board of Agriculture, the Oklahoma Department of Agriculture, Food, and Forestry shall prepare a draft denial or draft permit.
  1. Notice of a draft denial shall be given by the Department and notice of a draft permit shall be given by the applicant.
  2. Notice of the draft denial or draft permit shall be published as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. The notice shall identify public locations where the draft denial or draft permit may be reviewed, including a public location in the county where the proposed new site or existing facility is located, and shall provide for a set time period for public comment and for the opportunity to request a formal public meeting on the respective draft denial or draft permit. The time period shall be set at least thirty (30) calendar days after the date the notice is published unless a longer time is required by federal regulations promulgated as rules by the Board. In lieu of the notice of opportunity to request a public meeting, notice of the date, time, and place of a public meeting may be given, if previously scheduled.

B. Upon the publication of notice of a draft permit, the applicant shall make the draft permit and the application, except for proprietary provisions otherwise protected by law, available for public review at a public location in the county where the proposed new site or existing facility is located.

Added by Laws 2005, c. 292, § 17, eff. July 1, 2005.

§2-2A-27. Public meeting on draft denial or permit.

A. Pursuant to the rules of the Oklahoma Department of Agriculture, Food, and Forestry, the Department shall promptly schedule and hold a formal public meeting if the Department receives timely written request for the meeting on the draft denial or draft permit.

B. Notice of the meeting shall be given to the public at least thirty (30) calendar days prior to the meeting date.

C. The public meeting shall be held at a location convenient to and near the proposed new site or existing facility not more than one hundred twenty (120) calendar days after the date notice of the draft denial or draft permit was published.

D. At the meeting, any person may submit oral or written statements and data concerning the draft denial or permit.

E. The public comment period shall automatically be extended to the close of the public meeting. Upon good cause shown, the presiding officer may extend the comment period further to a date certain by so stating at the meeting.

F. The meeting shall not be a quasi-judicial proceeding.

G. The applicant or a representative of the applicant may be present at the meeting to respond to questions.

Added by Laws 2005, c. 292, § 18, eff. July 1, 2005.

§2-2A-28. Tier II applications - Final permit - Response to comments - Tier III applications - Proposed permit - Notice and hearing - Final denial or permit.

A. For draft permits or draft denials for Tier II applications on which no comment or public meeting request was received in a timely manner and on which no public meeting was held, the final permit shall be issued or denied.

B. For draft permits or draft denials for Tier II applications on which comment or a public meeting request was received in a timely manner or on which a public meeting was held, the Oklahoma Department of Agriculture, Food, and Forestry, after considering the comments, shall prepare a response to comments and issue the draft permit as is or as amended or make final denial.

C. The response to comments shall be prepared within ninety (90) working days after the close of the public comment period unless extended by the Director upon a determination that additional time is required due to circumstances outside the control of the Department. Circumstances may include, but shall not be limited to, an act of God, a substantial and unexpected increase in the number of applications filed, additional review duties imposed on the Department from an outside source, or outside review by a federal agency.

D. 1. For a draft permit for a Tier III application, after the public comment period and the public meeting, if any, the Department shall prepare a response to any comments received in a timely manner and either issue a final denial in accordance with paragraph 5 of this subsection or prepare a proposed permit.

2. When a proposed permit is prepared, the applicant shall publish notice, as legal notice in one newspaper of general circulation local to the proposed new site or existing facility, of the tentative decision of the Department to issue the permit. The notice shall identify the locations where the proposed permit and the response of the Department to comments may be reviewed, including a public

location in the county where the proposed new site or existing facility is located and shall offer a twenty-working-day opportunity to request an administrative hearing to participate in as a party.

3. The Department shall ensure that any additional notice requirements as otherwise provided by law are followed.

4. The opportunity to request a hearing shall be available to the applicant and any person or qualified interest group that alleges that the operation may have a direct, substantial, and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group.

5. If no written administrative hearing request is received by the Department by the end of twenty (20) working days after the publication date of the notice, the final permit shall be issued.

6. If the final decision of the Department is to deny the permit, it shall give notice to the applicant and issue a final denial in accordance with subsection G of this section.

E. 1. When an administrative hearing is requested in a timely manner on a proposed permit in accordance with subsection C of this section, all timely requests shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding and shall be conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture.

2. The applicant shall be a party to the hearing.

3. The Department shall hold a scheduling conference within sixty (60) calendar days after the end of the hearing request period.

4. The Department shall move promptly to an evidentiary proceeding in which parties shall have the right to present evidence before the Department on whether the proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with applicable provisions of the Oklahoma Agricultural Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

5. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default judgment with regard to that party; provided, however, that no final permit shall be issued solely on the basis of any such judgment.

F. If the Department decides to reverse its initial draft decision, it shall withdraw the draft denial or draft permit and prepare a draft permit or draft denial, as appropriate. Notice of the withdrawal of the original draft and preparation of the revised draft shall be given as provided in Section 15 of this act. The Department then shall reopen the comment period and provide additional opportunity for a formal public meeting on the revised draft as described in Section 18 of this act.

G. Upon final issuance or denial of a permit for a Tier III application, the Department shall provide public notice of the final permit decision and the availability of the response to comments, if any.

H. Any appeal of a Tier III final permit decision or any final order connected to it shall be made in accordance with the provisions of the Oklahoma Agricultural Code and the Administrative Procedures Act. Any appeal shall be limited to the participants of the administrative proceedings.

I. Any applicant, within ten (10) days after final denial of the application for a new original permit on which no final order was issued, may petition the Department for reconsideration on the grounds stated in the Administrative Procedures Act as if the denial was an order. Disposition of the petition shall be by order of the Director according to the Administrative Procedures Act.

Added by Laws 2005, c. 292, § 19, eff. July 1, 2005.

#### §2-2A-29. General permits.

For common and routine permit applications, the Oklahoma Department of Agriculture, Food, and Forestry may expedite the permitting process by issuing permits of general applicability, hereafter

identified as general permits. General permits shall be subject to all the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking shall not be applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit. General permits are limited to activities under the Tier I and Tier II classifications.

Added by Laws 2005, c. 292, § 20, eff. July 1, 2005.

## **INFORMATION MANAGEMENT**

### ICIS-NPDES

The Integrated Compliance Information System (ICIS) is a modernized information management system. It incorporates existing and emerging requirements of the National Pollutant Discharge Elimination System (NPDES) Program, supports data integration from ICIS-NPDES, and promotes the exchange and sharing of environmental and compliance data with state partners. ICIS-NPDES supports important program management activities and provides a mechanism for more effective management of the NPDES program by EPA and states. ICIS-NPDES supports data entry for:

- Permitting (Tracking and Issuance),
- Compliance Monitoring,
- Program Management (Compliance Determination), and
- Enforcement (Administrative, Criminal, and Judicial).

ICIS-NPDES enhances the states' ability to effectively manage the NPDES program through the ability to track enforcement and compliance with all NPDES program requirements. The EPA's ability to track compliance with the NPDES program effectively identifies and targets areas with the most significant environmental and human health risk, and also assesses environmental conditions and results. The systematic tracking of discharge monitoring data for existing and new NPDES program areas provides a capability to determine national compliance rates for special regulatory programs such as concentrated animal feeding operations and wet weather events.

The goal of ICIS-NPDES is to maintain the data necessary to provide for required management and oversight of the NPDES program. Four core components are required to accomplish this goal: data entry, background processes, interfaces, and reporting. Data entry allows for required information to be entered into the system. Background processes execute business rules to determine compliance. Interfaces ensure that interconnecting systems share data where consistency and synchronization across these systems are critical. Reporting provides users with retrieval and reporting capability. Each component accomplishes a key goal of ICIS-NPDES.

The state is a direct user of ICIS-NPDES and complies with the ICIS-NPDES Policy Statement. State staff access ICIS-NPDES through its server via the Internet as either authorized users or general users. Authorized users are generally classified as system administrators and have a high level of access to the system. General users have limited levels of access to ICIS.

Data elements or fields are maintained in ICIS-NPDES and used by the region or headquarters to oversee the effectiveness of the delegated program. These data elements are derived from the Water Enforcement National Data Base (WENDB). Upon transfer of a file to the state after program authorization, the state assumes all of the ICIS responsibilities associated with that file.

In addition, the state maintains any other data elements necessary for effective operation of the delegated program.

A source document exists in the official file for all data entered into ICIS-NPDES. Discharge Monitoring Report (DMR) data is entered into ICIS-NPDES directly from the source document but other data can be coded on data entry forms prior to entry into ICIS-NPDES.

Data quality is evaluated based on an objective assessment of the following four measures:

- Timeliness – the extent to which the data covering a specific interval of NPDES program activity is promptly entered into ICIS-NPDES;
- Accuracy – the extent to which the data recorded in ICIS-NPDES reflects the correct, true, or reported values;
- Completeness – the extent to which the minimum data elements are reported and recorded in the system; and
- Consistency – the extent to which the values of the data elements use the standard definitions or codes and the extent to which these definitions and codes are used in the same way by all users.

The following are the required types of data processed in ICIS-NPDES. Some will not be used by ODAFF, as they are not within its jurisdiction, such as pretreatment, or are not the norm for the type of permits to be issued by ODAFF, such as individual discharge permits, but are included in the complete list of data types:

<u>Data Type</u>	<u>Description</u>
Permit Basic Information	Data relates to basic permit identification and status information
Permit Narrative Conditions	Data describes textual non date based narrative requirements
Permit Limit Sets and Limits	Data relates to effluent limits in addition to monitoring and reporting requirements
Permit Schedules	Data relates to schedules established as a condition of a permit
Permit Tracking Events	Data relates to the dates of major milestones in the permit issuance process
Pipe Schedule	Data relates to DMR submission and reporting requirements for specific permitted outfalls

Parameter Limits	Data relates to permitted effluent limits and parametric requirements
Measurement/Violation	Data describes effluent measurements for parameters listed on DMR form and related system generated violation information
Enforcement Action	Data describes enforcement actions taken by the authorized agency against the facility
Enforcement Action Key	Data describes the violations addressed by an enforcement action
Compliance Schedule	Data relates to specific compliance schedule events and reporting schedules established as the result of an enforcement action to bring permittee back into compliance
Single Event Violation	Data describes an event violating a permit or a statute and is neither a system generated effluent limit violation nor a schedule violation; e.g. an authorized bypass or discharge, a violation detected during an inspection, or a pretreatment violation
Inspections	Data relates to compliance and special inspections of facilities
Inspection Schedule	Data relates to scheduling of inspections of facilities and is considered enforcement sensitive data
PCI/Audit	Data is from a Pretreatment Audit or a Pretreatment Compliance Inspection (PCI) (not part of the AgPDES program)
Pretreatment Summary	Data is from a Pretreatment Performance Summary (PPS) submitted by a pretreatment facility (not part of AgPDES program)
Special Regulatory Reports	Data is from required reports submitted by Special Regulatory Programs including Pretreatment, CAFO Annual Report, CSO/SSO Event Reports, Biosolids Report, Storm Water Event Report and MS4 Program Report (MS4 is not a part of the AgPDES program)
Contacts and Addresses	Contact and address information for people and

organizations relevant to an activity (e.g., permit,  
inspection) or a facility

Upon program approval, EPA transfers the files to the state in accordance with an agreed upon schedule stated in the EPA/Oklahoma MOA. The state assumes jurisdiction of a permit and total responsibility of ICIS-NPDES activities upon transfer of the file. EPA is responsible for all ICIS-NPDES activities associated with a permit until the files are transferred to the state.

This chapter describes the systems and methods that ODAFF uses to manage, administer and report on the AgPDES program. ODAFF provides information that allows EPA to determine whether the state is effectively implementing the CWA and associated regulatory requirements. The ODAFF system provides a reliable mechanism to ensure that AgPDES permitted dischargers submit compliance monitoring information to the state and that the state efficiently determines compliance with permit conditions. ODAFF ensures that all required data on AgPDES permits is uploaded to ICIS-NPDES in order for EPA to track overall program implementation.

#### Information Management Systems Used for AgPDES Implementation

The following information management systems describe the various systems implemented by ODAFF at NPDES program approval:

- ODAFF's Database--the primary information system used to assist with the implementation and management of the AgPDES program, including CAFO and CAFO storm water construction general permits, and pesticide general permits. It allows ODAFF to compile, manage and report on AgPDES program permitting and compliance monitoring data.
- DMR Submittals--Should there be a need for a facility to be issued an individual AgPDES discharge permit, Discharge Monitoring Reports (DMRs) are created specifically for each facility that has a discharge permit. The DMR forms are preprinted by EPA.
- ICIS-NPDES--Upon AgPDES program approval and as permitting and compliance responsibilities transfer from EPA Region 6 to ODAFF per the schedule in the MOA, the ODAFF is responsible to ensure data is entered into ICIS-NPDES for the facilities ODAFF has jurisdiction over.

The ODAFF is participating with EPA in a Data Exchange grant in the development of batch processes where data entered into the ODAFF database can be uploaded to ICIS-NPDES through EPA's Central Data Exchange Node and the ODAFF's network node.

The ODAFF's information management systems are integrated into each step of the permit application and development, compliance monitoring and enforcement, program management and EPA reporting processes. The following sections describe the information management related components of each process.



1. General Permits and NOIs (CAFO, Pesticides and any Programs with General Permits issued:

The ODAFF database tracks a permittee's compliance with any permit, including any noncompliance with permit conditions, inspection results, and follow-up compliance and enforcement actions. Authorizations under a general permit are tracked in ODAFF's database upon submittal to ODAFF of an applicant's Notice of Intent (NOI) seeking coverage under the general permit.

2. Storm Water Program:

ODAFF's database tracks permit and compliance data for all authorized storm water discharges under ODAFF's jurisdiction. Authorizations under general permits such as the general permit for storm water discharges related to construction activities, are tracked similar to an individual permit. Per the ICIS-NPDES Policy Statement, ODAFF is required to transmit the single event violations that occur under the storm water construction general permit along with all the required ICIS-NPDES data elements for the facility and permit information of the site at which the violation occurred. This information includes the enforcement action, penalty or compliance schedule and all inspections and associated identified violations which precipitated that enforcement action.

3. Individual Permits for all Programs under ODAFF Jurisdiction:

ODAFF's database tracks all permitting activities and compliance status of permittees, as well as inspection results and enforcement actions.

### Administrative File Review

The administrative file review is an annual review of the permittee files and is often the only opportunity to review the overall compliance status of a permittee. It is also used as a quality control measure for reviewing all facility level data stored in ICIS-NPDES on each permittee to ensure the accuracy of data in the database.

The administrative file review for cases currently under an enforcement action is performed by the Complaint and Enforcement Coordinator. The permit related file review is performed by Permits, Licensing and Registration Section staff. All other administrative file reviews are performed by Facility Performance Section staff.

### **PROCEDURES FOR ICIS-NPDES MAINTENANCE**

Permits, enforcement documents or inspection reports are entered into both ODAFF's database and ICIS-NPDES. ODAFF staff may code information to be input into ICIS-NPDES, will utilize ICIS-NPDES generated reports routinely, and may assist with data quality control; however, data entry into ICIS-NPDES is performed by select individuals as described below.

## **Permit Data**

### **1. Permit Application Data**

The Permits, Licensing and Registration Section receives permit applications for new, renewed or amended permits, including technical data from applicants, and reviews them for administrative completeness within ten (10) working days of receipt. When an application is declared administratively complete, a permit writer is assigned and a detailed technical review of the application commences. The date the application is declared administratively complete and the name of the permit writer assigned to the permit application are entered into ICIS-NPDES by the Administrative Assistant in the Section.

Upon completion of the technical review, the permit writer prepares a draft permit and related document (i.e., Fact Sheet, Statement of Basis). Once the draft permit is completed and receives all necessary approvals, it is routed back to the Administrative Assistant of the Section for public notice and public hearing scheduling. The Section's Administrative Assistant is also responsible for entering the WENDB data elements in ICIS-NPDES for:

- General information about the facility, including the facility name, address, and type of ownership, and information about the permit application, including the date the application is declared administratively complete and the name of the permit writer assigned to the permit application;
- Permit event data, including the date the draft permit is scheduled for public notice, as well as other information related to a public hearing, such as the Administrative Law Judge assigned to the case and the date of hearing; and
- Other facility level data related to the DMR, such as the mailing address, telephone number and signatory authority.

After a renewed, amended, or new permit is issued by the AgPDES Director or designee, the Administrative Assistant forwards a copy of the signed permit to the Administrative Technician. The permit conditions are entered onto a code sheet by the Technician, and entered into ICIS-NPDES by the Administrative Assistant within thirty (30) days of issuance. After signature, the Administrative Assistant also ensures that copies of the permit are forwarded to the following:

- One (1) copy to the permittee's file,
- One (1) copy to the appropriate inspector,
- One (1) copy to the EPA, Water Quality Management Division, and
- One (1) copy to EPA, Compliance Assurance and Enforcement Division.

### **2. Requests for Hearing**

The Administrative Assistant enters information regarding requests for hearings and concerning permit requirements, as well as permit renewal and permit issuance, into ICIS-NPDES. The

Administrative Assistant ensures existing permit conditions remain in effect and are tracked in ICIS-NPDES. No new permit conditions apply until a new permit is issued.

### **Enforcement Data**

All enforcement actions are entered into ICIS-NPDES by the Complaint and Enforcement Coordinator, including phone calls for incomplete or deficient DMRs, warning letters, requests for delinquent schedule reports, enforcement meetings, and formal actions issued to a permittee who is not meeting the terms or conditions of its permit, statute or rules. Copies of enforcement actions are forwarded by the Enforcement Officer to the Complaint and Enforcement Coordinator who reviews the documents, codes the milestone dates, updates ICIS-NPDES to reflect the changes, and reviews the changes for accuracy, and updates the Violation Summary Log.

The materials received as a result of the requirements of an enforcement order are received initially by the Enforcement Officer and AEMS Division Director for review to ensure accuracy and completeness of the information. The Enforcement Officer forwards the order to the Complaint and Enforcement Coordinator to complete code sheets and enter into ICIS-NPDES and advises if further action is necessary so a notation is made in the Violation Summary Log and in ICIS-NPDES that the document was received. The material is then forwarded to the permittee's file by the Complaint and Enforcement Coordinator. The Enforcement Officer also notifies the Complaint and Enforcement Coordinator within five (5) days of termination of an enforcement action to update ICIS-NPDES and the Violation Summary Log.

### **Inspection Data**

Inspections are conducted by AEMS inspectors located in the Field Operations and Enforcement Team of the Facility Performance Section. The purpose of these inspections is to evaluate the compliance status of regulated entities. Inspection data contains information related to the inspections at a facility, including the inspector, date of inspection, type of inspection, etc.

After conducting an inspection, the AEMS inspector is responsible for completing an inspection report and forwarding it to the Enforcement Officer. The inspection report is reviewed by the Enforcement Officer and all noted violations are processed in accordance with the Enforcement Response Guide. The Enforcement Officer forwards a copy of the inspection report to the Complaint and Enforcement Coordinator, who completes a code sheet for ICIS-NPDES entry of required inspection data. Data entry is completed within ten (10) working days of receipt of the inspection report. Following review of the inspection report, the Complaint and Enforcement Coordinator sends the inspection report to the Compliance Assistance Team's Administrative Assistant for placement in the permittee's official agency file.

### **Compliance Schedules**

Compliance schedules are a sequence of remedial actions to be accomplished by the permittee. Each schedule culminates in a specific requirement to attain an operational level and achieve final compliance with all applicable permit limits. ICIS-NPDES is used to track the scheduled events and the actual achievement dates. Compliance schedule violations are automatically determined from this information.

## 1. Permits

A schedule of compliance included in the permit is coded into ICIS-NPDES as a “narrative condition.” The Permit Writer submits the appropriate code sheet to the Administrative Assistant for entry into ICIS-NPDES and documents the reports required and associated due dates in the individual file. The compliance schedule data is entered within thirty (30) days of permit issuance.

When compliance schedule report or notification of actions taken is received from a permittee under a permit initiated compliance schedule, the Administrative Assistant is notified of the received date and enters the date received into ICIS-NPDES within five (5) working days. The Environmental Engineer or Environmental Programs Specialist reviews the submittal to determine if it meets the requirements and intent of the schedule. Should the submittal not meet the compliance schedule requirements, the Environmental Engineer or Environmental Programs Specialist addresses the issue through a letter to the permittee.

If the facility is under formal enforcement action, the report is forwarded to the Enforcement Officer for review and action. Should the submittal not meet the compliance schedule requirements, correspondence addressing the violation will be coordinated with the Enforcement Officer and the Environmental Engineer or Environmental Programs Specialist. The original submittal is forwarded to the permittee's file.

The Complaint and Enforcement Coordinator reviews the compliance schedules for each of the assigned facilities at least once per month to determine if all actions are completed and all reports are submitted. Any reports or actions found to be delinquent by fourteen (14) days after the due date are noted on the Violation Summary Log and are addressed by the Complaint and Enforcement Coordinator through a warning letter. Any reports or actions delinquent by more than thirty (30) days are referred to the Enforcement Officer for appropriate action. The Enforcement Officer determines if formal administrative enforcement action should be initiated. If an order is issued, a copy of the enforcement action is forwarded to the Complaint and Enforcement Coordinator to complete the necessary code sheets and entry into ICIS-NPDES and the Violation Summary Log.

## 2. Enforcement

All new and amended formal administrative enforcement actions are forwarded to the Enforcement Officer who reviews the document to determine if a schedule of compliance exists. ICIS-NPDES and the Violation Summary Log are updated by the Complaint and Enforcement

Coordinator in the same manner as described for permit compliance schedules. Compliance schedule data is entered within ten (10) working days of schedule establishment. Responses submitted pursuant to enforcement actions are received by the Enforcement Officer for review and approval within thirty (30) days of receipt of the response. Upon receipt, the Enforcement Officer forwards the enforcement actions to the Complaint and Enforcement Coordinator, who completes the appropriate code sheet and enters the receipt date into ICIS-NPDES and the Violation Summary Log. Data entry is completed within five (5) working days of receipt of the response. If the response received is administratively or technically unsatisfactory, the Enforcement Officer drafts the appropriate letter to the permittee and routes it to the Complaint and Enforcement Coordinator for noting on the Violation Summary Log and in ICIS-NPDES. The Complaint and Enforcement Coordinator forwards the report to the permittee's file.

### **Self Reporting Data and Discharge Monitoring Reports (DMRs)**

All individual permits that are tracked in ICIS-NPDES (major, significant minor) require DMR submittal by the twentieth (20) day of the month following the monitoring period. The permittee summarizes and submits the facility's monitoring and reporting requirements that are specified in the permit. That information includes any effective dates of the limits, the parameters to be tested, the applicable limits for each parameter, and the frequency of analysis and sample type for monitoring. The permittee summarizes and submits information to ODAFF on a preprinted DMR form, either EPA Form 3320-1 or an exact replica approved by the ODAFF for DMR reporting. An annual supply of preprinted DMRs is provided to the major and significant minor permittees two (2) months prior to the permit expiration date.

The DMR data is entered into ICIS-NPDES by the Administrative Assistant in the Permits, Licensing and Registration Section within thirty (30) days of receipt of the DMR form. The DMRs are screened to determine if the DMRs are postmarked on or before the twentieth day of the month and contain the proper signatures.

After the DMR data is entered into ICIS-NPDES and after performing Quality Control of the DMR and ICIS-NPDES to ensure data is accurately entered, the DMR is filed in the permittee's file. The Complaint and Enforcement Coordinator prepares a letter to the permittee requesting the DMRs if the forms are not received within thirty (30) days of due date. If a permittee fails to submit a complete, acceptable DMR by the required date, the Complaint and Enforcement Coordinator refers the permittee to the Enforcement Officer for appropriate enforcement action to resolve the violation.

### **Permit Noncompliance and Unauthorized Discharge Monitoring**

#### **1. Noncompliance Notification**

Unless otherwise specified, any noncompliance which may endanger human health or safety or the environment must be reported by permittee to ODAFF. Report of such information is provided orally or by facsimile transmission (FAX) to ODAFF within twenty-four (24) hours of becoming aware of the noncompliance. A written submission of such information is also

provided to the AEMS Division within five (5) working days of becoming aware of the noncompliance. The written submission must contain the following:

- a description of the noncompliance and its cause and the potential danger to human health or safety or the environment;
- the period of noncompliance, including exact dates and times;
- if the noncompliance is not yet corrected, the anticipated time it is expected to continue; and
- the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

An unauthorized discharge is considered to be any discharge, defined as discharge of a pollutant in Clean Water Act, section 502(12), into or adjacent to waters in the state at any location not permitted as an outfall or otherwise defined in the permit. Unauthorized discharges and unauthorized bypasses must be reported to ODAFF in conformance with the procedures outlined above.

Notwithstanding any of the above, any effluent violation which deviates from the permitted effluent limitation by more than forty percent (40%) must be reported in writing to the AEMS Division Director within five (5) working days of becoming aware of the noncompliance.

Any other noncompliance, or any required information not submitted or submitted incorrectly, must be reported as promptly as possible. These types of noncompliance are also reported on the DMR.

## 2. Processing of Written and Verbal Noncompliance and Unauthorized Discharge Reports

Noncompliance information reported verbally or by fax within twenty-four (24) hours is documented either by receipt of the fax itself or by completing an Unauthorized Discharge Notification Form, a Telephone Memo to the File form, or by entering the notification into a log or field notebook. For verbal notifications, the entity is reminded to follow up with a written notification. Written five (5) day noncompliance reports submitted by the regulated entity are forwarded to the Complaint and Enforcement Coordinator for processing. The reports are entered in the Violation Summary Log and are reviewed by the designated administrative support staff for VRAC to ensure it contains all the required information. If VRAC is exceeded, the report is forwarded to the Enforcement Officer for consideration of formal administrative enforcement action. If VRAC is not exceeded, the Complaint and Enforcement Coordinator evaluates the current compliance status of the permittee and takes the appropriate action.

If the Complaint and Enforcement Coordinator receives noncompliance reports on a facility currently under formal enforcement action, the report is reviewed, entered on the Violation Summary Log and routed to the Enforcement Officer, regardless of VRAC. When the Enforcement Officer completes an action, the Complaint and Enforcement Coordinator is notified so that the action can be entered into the Violation Summary Log and ICIS-NPDES.

## **Administrative File Review**

The administrative file review is an important element of ICIS-NPDES maintenance. It is an annual review of the permittee's file and is often the only opportunity to review the overall compliance status of a permittee. It is also used as a quality control measure for reviewing all facility level data stored in ICIS-NPDES on each permittee to ensure the accuracy of data in the database.

Any discrepancies are addressed informally by the Permits, Licensing and Registration Section if the problem is of an administrative nature. If formal enforcement action by the Enforcement Officer is pending, all correspondence initiated by the Permit, Licensing and Registration Section will be coordinated with the Enforcement Officer. If the violations meet or exceed VRAC, the file is routed to the Complaint and Enforcement Coordinator for review and appropriate action. If any changes to ICIS-NPDES are needed as a result of the administrative file review, the Administrative Assistant will complete the appropriate code sheets and enter the information into ICIS-NPDES.

### *Review Procedures*

The Complaint and Enforcement Coordinator performs the administrative review for those cases currently under formal enforcement action using a Facility Report. The Coordinator requests a Facility Report printout from ICIS-NPDES one week prior to the scheduled review to:

1. Research the permit.
  - a. Check the effective date on the permit against the facility report to ensure that ICIS-NPDES is current.
  - b. Check the expiration date on the permit and confirm the receipt of a permit renewal application with the Permits, Licensing and Registration Section if the permit expires within six (6) months.
  - c. Review outfall data to confirm active status.
2. Review the permittee's schedule of compliance.
  - a. Compare the schedule of compliance listed in the Facility Report against the current compliance schedule in the permit or any schedules contained in any subsequent enforcement actions. Any discrepancies between the Facility Report and the enforcement actions are researched and reconciled.
  - b. If any delinquent compliance reports from an enforcement action are identified, the Complaint and Enforcement Coordinator requests the delinquent report immediately.
3. Review the self reporting forms.

- a. Ensure all DMRs are received and are complete. If not, request the delinquent reports or omitted data through written correspondence.
- b. Check the DMR for completeness.
  - Has a DMR been received for each month?
  - Has a DMR been received for each outfall or combination of outfalls?
  - Are the DMRs complete? Are the required parameter values included?
  - Were frequency of analyses and sample type reported? Do they agree with the permit requirements?
  - Has the permittee made changes to the permit limits on the DMR? If so, determine why the change was made. If ICIS-NPDES is incorrect, complete the necessary code sheets and submit to the data entry staff for entry into ICIS-NPDES. If the permittee is in error, notify them of the error and what the correct limits are.
  - Were the forms signed by the principal executive officer or an authorized agent of the permittee?
  - Are the DMRs forms being received on time?
  - Ensure all Violation Review Action Criteria (VRAC) violations are addressed.
4. Review the noncompliance reports to ensure that all noncompliance has been listed on the Violation Summary Log.
5. Review the inspection data to ensure that the inspection data is entered correctly into ICIS-NPDES. The date of inspection, type of inspection and the individual performing the inspection must be in agreement.
6. Review correspondence.
  - a. Confirm that all correspondence from the permittee was reviewed and responded to within necessary time frames.
  - b. Confirm that all correspondence was responded to when a written response from the permittee was requested.
7. Review enforcement data to ensure all pending and active enforcement actions are coded or screened for ICIS-NPDES data entry and quality control measures are taken to ensure the data is entered correctly.

#### *Completion of Review*

When the review of the file for an active enforcement case is complete, the Complaint and Enforcement Coordinator, determines if any further enforcement action should be initiated. If all noted discrepancies are of an administrative nature, the Complaint and Enforcement Coordinator drafts the appropriate letter to resolve the problem. Any missing information is also requested. If violations are identified and VRAC is automatically met or exceeded, the appropriate action is initiated.



If the review is performed by the Permits, Licensing and Registration Section, any errors or discrepancies identified in ICIS-NPDES are corrected through correspondence with the permittee. If the discrepancies are the result of data input errors, the appropriate code sheets are completed and submitted to the data entry staff for correction.

## COMPLIANCE REVIEW

The AgPDES compliance monitoring program includes procedures for evaluating self monitoring reports, for determining compliance independent of self monitoring, and for responding to complaints submitted by citizens. ODAFF primarily monitors permit compliance on two components: self-reporting that occurs in response to permit requirements and the compliance inspections conducted by ODAFF staff. Self-reporting information submitted by the regulated facility, reports prepared by the regulated facility and reports prepared by ODAFF staff following compliance inspections are used to determine if compliance with permit requirements is being maintained. ODAFF also inspects non-permitted facilities<sup>1</sup> within its jurisdiction for compliance with the Clean Water Act. Details of the ODAFF inspection program are found in Chapter 4 of the Enforcement Management System (EMS).

Compliance is ensured by ODAFF oversight of dischargers tracked through permits and authorizations, inspections, and ODAFF response to citizen complaints made and tracked in the complaint database. The citizen complaint system is a primary method whereby ODAFF identifies unauthorized discharges.

### Data Management and Public Access to Information

An orderly flow of information provides assurance that: 1) legally required compliance information is processed in a consistent and timely manner, and 2) data can be readily located and accessed at appropriate points in the decision making process. The foundation of the AgPDES compliance tracking and enforcement system is a complete and accurate information base which is an inventory of pertinent data on all regulated entities. The information base is built on the information contained in the current permits and authorizations under ODAFF jurisdiction.

ODAFF uses a number of tracking and database tools to assist with management of the AgPDES program. These systems currently exist or are being developed but may be expanded or enhanced to improve their efficiency or scope to accommodate utilization of EPA's national database and additional staff and program responsibilities.

AgPDES information is maintained in the following systems:

---

<sup>1</sup> The CWA regulates the conduct of persons, which includes the owners and operators of facilities and activities. To improve readability, the words "facility" or "facilities" are intended in this chapter to cover the owners or operators of facilities and activities, both permitted and unpermitted, within ODAFF's jurisdiction.

**Hardcopy Files** – These files contain relevant correspondence, including telephone conversation memos, permit applications, notices of intent (NOI), public notices, statements of basis or fact sheets for individual discharge permits, permits, compliance inspection reports, enforcement documents and nutrient management plans for permitted CAFOs.

**Integrated Compliance Information System (ICIS-NPDES)** – This is EPA’s national computer database management system designed to store NPDES permit and compliance data. ICIS-NPDES provides a uniform means of communication among the state, Region 6 and EPA Headquarters. Information in ICIS-NPDES is uploaded from the ODAFF’s local database or manually entered into ICIS-NPDES by the Complaint and Enforcement Coordinator on the Compliance Assistance Team of the Facility Performance Section.

**ODAFF’s Database** – This is a database set up on the ODAFF’s local area network and is available on a real time basis to program staff and managers as ‘read only’ and with total access available to the data management staff in the Permits, Licensing and Registration Section and Compliance Assistance Team. The system allows access by the ODAFF staff to a centralized data repository. The database is used to track the receipt of permit applications and NOIs, monitor their progress through the review and issuance steps, inventory permits, track permit renewals, provide information on the distribution of permits by type and location, provide information on watershed location where facilities are located, generate inspection lists, generate large mailings for correspondence related to permit maintenance and compliance, maintain compliance history, upload information to ICIS-NPDES and track inspections, compliance history and enforcement correspondence and responses. The system is able to produce various reports on the applications and NOIs received and decisions issued during any given time period. It also provides information on the current status of an application or NOI at any given time.

**The Complaints Tracking System** – As the ODAFF receives citizen complaints, they are logged into a tracking system. The system allows sorting of complaints in various ways to track the number, geographic locations and types of complaints and to record actions taken and timeliness of responses.

All information except that which is determined to be confidential is available to the public for review or copies provided after a written request by email or fax is received by ODAFF under the Oklahoma Open Records Act or other applicable law.

### Complaints and Discharges

Aggrieved persons may file complaints orally or in writing. When a complaint is phoned into the ODAFF offices, the Complaints and Enforcement Coordinator elicits information that provides the facility’s name, address and phone number; driving directions to the complaint site;

a description of the nature of the complaint; and the name, phone number and address of the complainant so that the complainant may be notified of the outcome of the investigation. If the phone call is about a discharge, the information collected includes the name and address of the facility; the date, time, location and duration of the discharge; the source and cause of the discharge; a description of the discharge; the estimated volume of the discharge; whether samples were taken of the discharge and whether they are sent to a laboratory for analyses; and any actions taken to mitigate immediate damage from the discharge.

ODAFF inspectors are responsible for the investigation of reported incidents and citizens' complaints. Inspectors typically respond within a seventy two (72) hour period after receiving the complaint. Some complaints are received by the Oklahoma Department of Environmental Quality (DEQ) and forwarded to ODAFF for activities under ODAFF's jurisdiction. Complaints and reports of discharges can also be phoned in to the ODAFF directly via its "hotline" at 1-800-235-9877 or to the main office during working hours.

All reports of discharges by facilities are responded to within seven (7) working days and usually within 72 hours. ODAFF uses the same form for reports of discharges from facilities that it uses for citizen complaints and similarly tracks the events in the Complaint Tracking System.

When a complaint is received, a complaint intake form is completed by the Complaint and Enforcement Coordinator. The form includes spaces for the name of the person making the complaint, if given, a telephone number and the location of the problem. The Complaint and Enforcement Coordinator also provides the inspector name that is assigned to that county in which the complaint is located. A tracking number is established and also placed on the form. The Complaints and Enforcement Coordinator enters the information from each complaint intake form into the Complaints Tracking System.

The Complaints and Enforcement Coordinator forwards the complaint intake form to the AEMS Division Director and a copy is faxed to the appropriate inspector. An email is also sent to alert or brief the inspector about the complaint. A file folder is created for the complaint under its unique tracking number in which the intake form is placed.

If the inspector cannot respond to the complaint in a timely manner, the inspector contacts the Division Director immediately and requests that another staff member be sent. If the inspector needs to seek direction on the complaint, the inspector contacts the Division Director immediately for clarification.

The inspector investigates the citizen's complaint or facility's discharge report within seven (7) working days of receipt of the assignment. Depending on the nature of the complaint or discharge report, the inspector may contact the Division Director, who will then contact the Office of General Counsel regarding any right of entry issues. These actions are included in the complaint investigation report.

After completing the complaint or discharge report investigation, the inspector drafts a complaint or discharge investigation report that includes observations; a description of problems or violations observed, if any; follow up actions to be taken by the facility; whether the complaint is for a permitted or non-permitted facility; and the complete address and phone number of the complainant. The report is completed within twenty (20) days of receiving the citizen's complaint or facility discharge report. If additional information is acquired about the complaint before the report is sent out, that information is added to the report and routed as described below.

When the complaint report or facility discharge investigation report is complete, the inspector sends it to the Complaint and Enforcement Coordinator. If the complaint is not anonymous, the Complaint and Enforcement Coordinator drafts a cover letter for the Division Director's signature, stating that an inspection was initiated and a report on the inspector's conclusions is provided to the complainant. The letter from the Division Director is included as part of the complaint report. The Complaint and Enforcement Coordinator enters the Director's letter and final inspection report into the complaints database. The letter, with the final complaints report, is sent to the complainant. A copy of the letter and final complaint report are copied and placed into the complaint file folder along with any other documentation relative to the complaint. If the complaint is about a permitted facility, a copy of the complaint intake form and the final report are also filed in the facility file. The above process is also applied to a facility discharge report; the Division Director's letter and discharge investigation report are sent to the facility, and copied to the facility file.

### Compliance Monitoring and Evaluation

ODAFF's permitting and compliance programs are designed to help achieve compliance through prompt, efficient and cost effective means. ODAFF contributes to a facility's ability to achieve and maintain compliance by issuing a clearly stated permit with valid and understandable conditions based on state law, as well as immediate contact with the facility when noncompliance is discovered.

The primary objective of the compliance and enforcement program is to resolve compliance problems quickly and at the lowest appropriate level. As a general practice, noncompliance that is accidental and isolated is returned to compliance as quickly and efficiently as possible. ODAFF's approach to noncompliance is a consistent and escalating response that is in proportion to the nature of the violation. ODAFF is prepared to pursue formal administrative, civil or criminal action for willful or repeat violations.

ODAFF receives, evaluates, retains and investigates all notices and reports of AgPDES permittees to determine the facility's compliance status. The ODAFF database maintains an inventory of all AgPDES permitted sources, including application, facility, billing information, permit limits, DMRs if required, other reporting required by the permit and in any related orders, inspection results, permittee compliance follow up, enforcement action and compliance

schedules. The database allows ODAFF to compile, manage, track, review and report on the compliance status of permitted operations and to verify compliance with permits and conditions.

The permittee submits compliance documentation, or other permit related documents such as DMRs if the permittee has an individual permit, to ODAFF in accordance with the self-monitoring and reporting timetable requirements of the permit. Data from the hard copy of the DMR is manually entered into ICIS-NPDES. The date the ODAFF receives a complete DMR is considered the receipt date for compliance purposes. Required reports, other than DMRs, are submitted by hard copy and tracked in the ODAFF database via their due dates specified in the permit.

Self-monitoring and reporting violations are classified into two categories. The first category is a system generated violation, e.g., an effluent limit violation discovered via DMR or other self-report submission, non-receipt of a DMR or other self-report, or a compliance schedule violation. The second category is a single event violation. A single event violation is a violation of the AgPDES permit or regulatory requirement that is distinct from a system generated violation, e.g. an unauthorized bypass or discharge, a violation detected during an inspection or a narrative violation description reported on a DMR or other required report.

The Complaint and Enforcement Coordinator conducts a compliance evaluation to determine a permittee's compliance status with AgPDES permit requirements. This consists of:

- Reviewing DMRs and reports upon receipt for completeness and to determine compliance with permit limits and conditions. If more information is needed, the Complaint and Enforcement Coordinator follows up with a permittee, as needed, to request additional information through a Request for Information. The ODAFF's database reporting capabilities will help the Complaint and Enforcement Coordinator's review by creating automated reports for documents that are not submitted or incomplete.
- Conducting a facility file review for the presence of other required permit reports, such as the annual report, using ODAFF's database to generate a report to find documents not yet submitted by the facility.
- Contacting a facility to make a verbal or written information request when potential noncompliance issues are found during routine review of required information from the facility. ODAFF may follow up with an NOV and possibly an inspection.
- Reviewing the results of effluent and ambient monitoring data collected by AEMS inspectors or the permittee and stored in ICIS-NPDES. The automated reporting capabilities of ICIS-NPDES produce a report that assists the compliance and enforcement staff in determining compliance with permit limits and state water quality standards, if the permit has limits contained within it and DMRs are submitted.
- Reviewing any permit related orders.

If individual permits are issued by ODAFF, the Compliance Assistance Team also supplies Discharge Monitoring Report (DMR, EPA Form 3320-1) forms with current permitted effluent limitations to all permittees. The Complaint and Enforcement Coordinator receives, reviews and

tracks monthly self-reported data received from permitted facilities throughout the state. The Complaint and Enforcement Coordinator receives and initially reviews the data utilizing the Violation Review Action Criteria (VRAC) located in this chapter as Table 3-1. If the facility exceeds VRAC for administrative requirements such as a failure to self report, the Complaint and Enforcement Coordinator may take informal enforcement action which includes warning letters and verbal contact. The Complaint and Enforcement Coordinator takes the appropriate action to address the noncompliance within thirty (30) days of becoming aware of the violation. If the alleged violator does not respond, if the response is not adequate, or if the noncompliance is non-administrative in nature, the facility is referred to the Field Operations and Enforcement Team of the Facility Performance Section for assignment and enforcement review by the Enforcement Officer.

### Compliance Screening

The Violation Review Action Criteria (VRAC) serves as a screening device to assure that limited enforcement resources concentrate on the most significant violations and that enforcement actions return a facility to compliance before it meets significant noncompliance (SNC) criteria. SNC criteria for the AgPDES program are found in Table 3-2, Agriculture Pollutant Discharge Elimination System (AgPDES) Program CAFO or Other Agriculture Related Operations SNC Criteria and Table 3-3, Agriculture Pollutant Discharge Elimination System (AgPDES) Program Storm Water SNC Criteria.

The VRAC criteria are used by the Complaint and Enforcement Coordinator to ensure that the appropriate enforcement response is initiated to identify permit effluent violations in the initial screening of DMR forms and other reports dealing with AgPDES permits. VRAC also identifies other schedule, reporting, and non-effluent type violations of permits and enforcement orders. Screening based upon VRAC does not establish which deviations from the effluent limitations are violations of the permit or of the Federal Clean Water Act because all such deviations, unless specifically authorized elsewhere in the permit, are violations. Therefore, the criteria do not excuse any violation regardless of significance including major or minor deviation from a permit, Administrative Order or rules.

The VRAC does not establish the level of formal enforcement response necessary, nor does VRAC establish a policy of no enforcement response to violations within the criteria. All violations identified by the criteria and the Complaint and Enforcement Coordinator are reviewed by the Enforcement Officer and addressed, in writing, to the permittee with a warning of legal liability and, where appropriate, a request for explanation.

For many violations, VRAC is equivalent to or more stringent than the reporting criteria established by the Quarterly Noncompliance Report (QNCR) regulation. Those violations are reviewed by the Complaint and Enforcement Coordinator and listed on the QNCR. Finally, a subset of violations identified on the QNCR meet the definition of Significant Noncompliance (SNC). The definition for SNC is provided by the EPA. SNC identifies those violations that must

receive formal enforcement action response or return to compliance within a fixed period of time.

The Complaint and Enforcement Coordinator notifies the Enforcement Officer of entities which exceed VRAC or are SNC. The Complaint and Enforcement Coordinator prescreens the violations and recommends appropriate enforcement action, as necessary. The enforcement response reflects the nature and severity of the violation, and, the response is the initiation of a formal enforcement action for SNC violations or a return to compliance by the permittee within one quarter from the date that the SNC violation is first reported on the Quarterly Noncompliance Report (QNCR). Formal enforcement action is taken before the violation appears on the second QNCR, within sixty (60) days of receipt of the first QNCR. Failure by ODAFF to act within this time period may elicit a response from EPA. As stated in the MOA, EPA may proceed with any and all enforcement options available to it under Section 309 of the CWA, but generally will provide 30-days notice to ODAFF of its intent.

Prior to the monthly noncompliance review meeting, the Complaint and Enforcement Coordinator obtains a retrieval from ODAFF's database that outlines compliance schedules, nonsubmittal of reports, enforcement order status and inspection information. Noncompliance and discharge reports received by ODAFF either by letter or verbally are also reviewed by the Complaint and Enforcement Coordinator. The VRAC criteria at the end of this chapter are applied and appropriate follow up is initiated. Reporting violations exceeding the VRAC are handled by the Complaint and Enforcement Coordinator. Any effluent or other technical violations exceeding the VRAC are forwarded to the Enforcement Officer to initiate enforcement action. All enforcement actions are initiated in accordance with the ERG found in the Enforcement Evaluation chapter in this manual.

Other reports required to be submitted by the permittee and routine inspection reports are reviewed by the Complaint and Enforcement Coordinator and Enforcement Officer to determine their completeness. Submittals required by enforcement orders are received by the Enforcement Officer and reviewed for adequacy. Enforcement actions are initiated in accordance with the ERG. Formal or informal enforcement actions for violations that exceed the VRAC are initiated by the Enforcement Officer and informal actions are initiated by the Complaint and Enforcement Coordinator when reporting violations are discovered. Information from reports is coded onto ICIS-NPDES data entry forms by the Complaint and Enforcement Coordinator and entered by the Complaint and Enforcement Coordinator into ICIS-NPDES, then routed to the permit files.

The Complaint and Enforcement Coordinator tracks the reports and any follow up actions for deficient reports in the Violation Summary Log (VSL). The VSL is a log of all AgPDES permit violations, reports, complaints and correspondence received and actions taken. The VSL is maintained and kept current by the Complaint and Enforcement Coordinator.

For each facility, the following components are included in the VSL:



- AgPDES permit number;
- Name and location as entered in ICIS-NPDES and the description of the location of facility should there be more than one facility under an owner's name;
- Former name and date of name change or permit transfer;
- Date of violation;
- Type of violation;
- ODAFF responses listed for each particular violation from initial reaction to formal closeout;
- Date of responses;
- Person initiating the response;
- Due date of permittee's response;
- Status reflecting the permittee's level of compliance during the resolution of the individual case;
- Person reviewing the form; and
- Comments or additional remarks as needed.

### Compliance Assistance

In addition to tracking and enforcing compliance obligations, ODAFF provides compliance assistance to facilities statewide. When a permittee requests information regarding how to comply or stay in compliance with a permit, ODAFF provides service to the permittee. Compliance assistance may include facility specific technical assistance and on site assistance for pollution source identification and reduction, or elimination.

**Table 3-1**

**Violation Review Action Criteria (VRAC)**

**I. Violations of Effluent Limits**

**Direct Discharge Permit Violations**

<b>Violation</b>	<b>Criteria</b>
30-day average violations*	2 violations in a 6-month period
7-day average violations*	2 violations in 1 month
Daily maximum violations*	4 violations in 1 month
Any limit	Causes or has the potential to cause a water quality or a health problem, or the violation is of concern to the Division Director.
Non-effluent violations	Any unauthorized bypass or unpermitted discharge which causes or has the potential to cause a water quality or health problem

\* Excludes bacteriological counts (eg. fecal coliform), color and thermal parameters for which criteria are discretionary.

**II. Violations of Compliance Schedules, Permit Schedule and Administrative Orders**

<b>Violations</b>	<b>Criteria</b>
Submit Correction Action Plan/Schedule	60 days past schedule date
Start Construction End Construction Attain Final Compliance	90 days past schedule date
All Additional Milestone Dates	60 days past schedule date
COs, ACOs, ACPOs or other enforcement order	Any violations during the review period
Judicial Order	Any violations during the review period

### III. Violations of Reporting Requirements in Permits

<b>Violations</b>	<b>Criteria</b>
Discharge Monitoring Reports (DMRs)	30 days overdue, incomplete, illegible or incorrect
Compliance Schedule Reports ( final progress/quarterly reports)	30 days overdue, incomplete, illegible or incorrect
Failure to provide “24-hour” notice of violation as required	Any violation
Failure to file required report on a violation as required	More than 1 time during a 12-month period
All additional reports including annual reports submitted by CAFOs or others	30 days overdue, incomplete, illegible or incorrect

### IV. Violations of Other Requirements

<b>Violations</b>	<b>Criteria</b>
General Permit Conditions a. Record Keeping, Operation and Maintenance (O&M)  b. Best Management Practices (BMPs)  c. Terms of nutrient management plan (NMP) or comprehensive nutrient management plan (CNMP) or animal waste amangement plan (AWMP)	Any violation of the narrative requirements (i.e., inaccurate record keeping, inadequate O&M)  Any failure to follow BMPs (i.e., requirement to develop and implement BMP)  Any violation of terms of the corresponding plan; land application rate, setbacks, testing requirements
Discrepancies found in the course of inspections, audits or during the review of annual compliance inspections	Any violation
Other Violations	Violation for which a formal enforcement action is recommended by the Enforcement Response Guide

**Table 3-2**  
**Agriculture Pollutant Discharge Elimination System (AgPDES) Program CAFO**  
**Significant Noncompliance (SNC) Criteria**

Any significant unauthorized discharge <sup>1</sup>
No Nutrient Management Plan (NMP), CNMP or AWMP, when one is required
Multiple violations of permit requirements (including failure to apply for an NPDES permit, when one is required). For example, multiple deficiencies in implementing the permit and the NMP, such as failure to: <ul style="list-style-type: none"> <li>• Maintain adequate storage capacity and containment</li> <li>• Implement buffer/setback requirements</li> <li>• Properly manage chemicals and other containments handled on-site</li> <li>• Properly manage mortalities</li> <li>• Conduct proper operation and maintenance</li> <li>• Properly handle manure, including land applying in accordance with NMP</li> <li>• Test soils and manure/litter, as required</li> <li>• Meet recordkeeping requirements</li> <li>• Keep the NMP, CNMP or AWMP up-to-date</li> </ul>
Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more

<sup>1</sup>Significant unauthorized discharge is an unauthorized release of pollutants to a water of the United States that has negatively impacted or has the potential to negatively impact human health or the environment. Factors to consider in determining whether or not a significant unauthorized discharge has occurred may include the following:

- The discharge caused or contributed to an exceedance of any applicable water quality standard;
- The discharge or overflow is not weather-related;
- The discharge caused or contributed to a fish kill, fish advisory, or shellfish bed or beach closing;
- The discharge impacts an area identified as being disproportionately impacted by pollutants from multiple environmental pathways;
- The water body impacted by the discharge is:
  - a drinking water source, has drinking water intakes, or is in a source water protection area;
  - a high quality habitat for aquatic organisms, fish, or wildlife;
  - a habitat for endangered species;
  - an Outstanding Natural Resource Water;
  - a waterfowl staging or nesting area;
  - used for shellfish harvesting;
  - used for primary or secondary contact recreation; or
  - a sensitive coastal area where habitat relies on adequate water quality to thrive.

**Table 3-3**  
**Agriculture Pollutant Discharge Elimination System (AgPDES) Program**  
**Storm Water Significant Noncompliance Criteria**

<b>Storm Water SNC Criteria</b>
A significant unauthorized discharge
Any significant unauthorized discharge at a site with a small construction waiver or conditional exclusion for no exposure
Significant violations of permit requirements. Examples of such violations include, but are not limited to: <ul style="list-style-type: none"><li>• Lack of or a substantially inadequate SWPPP or SWMP</li><li>• Substantial failure to implement or maintain BMPs and</li><li>• Substantial failure to perform required monitoring</li></ul>
Failure to obtain permit coverage as required where there is a discharge
Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more
Failure to submit required report (including failure to respond to an information request) or report is late by 90 days or more

## COMPLIANCE INSPECTIONS

The ODAFF compliance and enforcement program assures compliance with AgPDES permit and program requirements from covered facilities<sup>1</sup> by using a combination of compliance monitoring, inspections, compliance assistance and enforcement. The ability to determine permit compliance is primarily founded on two components: the self reporting by the permittees that occurs in response to permit requirements and compliance inspections conducted by ODAFF staff. ODAFF reserves the right to establish state compliance and enforcement priorities but generally targets resources to coincide with EPA's national priorities and goals as set by the Office of Enforcement and Compliance Assurance. ODAFF inspectors also investigate all written or verbal citizen complaints regarding facilities and any reported discharges.

ODAFF inspectors conduct all compliance inspections of authorized discharges under AgPDES jurisdiction, including those at CAFOs, pesticides application sites, and agricultural related storm water construction sites. Staff from the Facility Performance Section are primarily responsible for performing compliance inspections but are assisted by members of one of ODAFF's other divisions, particularly the Permits, Licensing and Registration Section.

ODAFF is authorized to enter public or private property to make investigations, inspections, examine records and sample as necessary for the administration and enforcement of the program. In conducting inspections, the inspectors follow the biosecurity procedures outlined by the owner of the facility or the biosecurity procedures established by EPA (first issued November 10, 2001) if a facility does not have its own.

### Compliance Monitoring Inspections for Permitted Facilities

As described in Chapter 6 of the Program Description, the AgPDES program is implemented using both general and individual permitting procedures. Chapter 6 describes how ODAFF uses the EPA classification system for defining a "major" facility and a "minor" facility. Because the AgPDES program is primarily implemented through general permits, the universe of authorized dischargers is predominantly minor facilities. Compliance, recordkeeping, monitoring, inspection and enforcement needs differ for individual and general permits, between major and minor permittees, and amongst regulated sectors.

Inspections of AgPDES permittees are generally conducted on an annual basis, unless otherwise specified. ODAFF may perform additional inspections as a result of citizen complaints, any

---

<sup>1</sup> The CWA regulates the conduct of persons, which includes the owners and operators of facilities and activities. To improve readability, the words "facility" or "facilities" are intended in this chapter to cover the owners or operators of facilities and activities, both permitted and unpermitted, within ODAFF's jurisdiction.

additional information indicating noncompliance, DMR review, ODAFF's knowledge of past violations, or requests made by other ODAFF divisions. Permit renewal or modification may also prompt an inspection.

The state is divided into regional areas consisting of several counties and each area has an inspector assigned to it. See Appendices A for the map of ODAFF areas and inspectors. Each inspector is responsible for conducting various types of compliance inspections and complaint investigations. Inspections may be targeted based on recent compliance records, the sensitivity of the receiving waters or watershed, outstanding compliance schedules or pending technical issues. In addition to planned inspection activities, additional visits are made in response to compliance problems, citizen complaints and technical assistance needs. Annual inspection targets may be modified with the concurrence of both ODAFF and EPA. ODAFF provides EPA adequate notice and opportunity to participate in its inspection activities.

Independent of information supplied by the permittee, the ODAFF conducts onsite inspections of a permitted facility to ascertain compliance or noncompliance with:

- AgPDES permit conditions,
- State law or rules, or
- Compliance schedules.

An inspection may involve the following:

- Verification of accuracy of information submitted by the permittee,
- Verification of the adequacy of sampling and monitoring by the permittee,
- Evidence gathering to support an enforcement action against both permitted and unpermitted facilities,
- Obtaining information that supports the permitting process, and
- Assessing compliance with orders or consent decrees.

Inspections are conducted in accordance with the July 2004 EPA *NPDES Compliance Inspection Manual* or subsequent editions and the ODAFF Standard Operating Procedures for Sample Collection. The EPA NPDES inspection manual provides guidance on conducting and reporting of NPDES inspections of municipal and industrial facilities, storm water discharges from industrial and construction sites, pretreatment facilities, municipal wastewater collection systems, unpermitted facilities, and CAFO facilities.

### ***Types of Inspections***

The type of inspection the ODAFF conducts depends on the purpose of the inspection. The main types of inspections are:

**Concentrated Animal Feeding Operation (CAFO) Inspection**--The objective of this inspection is to evaluate a CAFO's compliance with permit requirements, permit conditions, applicable rules, and other requirements. The ODAFF's AEMS04 form (see App. D), which is equivalent to EPA's CAFO NPDES Compliance Inspection Report Form 3560-3, or the most recent approved U.S. Office of Management and Budget (OMB) version is used. ODAFF inspects all CAFO permitted facilities, whether covered by an individual permit or a general permit, at least once per year. That inspection is a complete facility review for compliance with AgPDES requirements. Inspections are conducted more frequently for a facility with violations, complaints or repeat violations based on potential threats to human health or the environment.

**Storm Water Construction Inspection**--The storm water inspection ensures that construction sites are authorized under an AgPDES permit to discharge storm water and are implementing a Storm Water Pollution Prevention Plan (SWPPP). Each year, the ODAFF conducts a storm water compliance inspection on at least ten percent (10%) of the total construction sites authorized to discharge storm water associated with construction activities, and to perform an onsite comprehensive review of all elements of the permit and implementation of the facility site SWPPP. Additional inspections are prioritized and scheduled by ODAFF based on risk to human health or the environment. Criteria that contribute to scheduling this type of inspection include:

- A legitimate complaint of human health or environmental hazards,
- A new site or significant modification to the existing permitted site,
- Permit violations,
- Other factors, including fish kills, significant human health or environmental problems, joint inspections with other agencies or inspections of opportunity due to travel in the vicinity.

**Compliance Inspections for Other Types of AgPDES permits**--These inspections are for all permit types other than CAFO and Storm Water and are dependent on the permit type. The inspection is likely to involve the following:

- Conduct a visual inspection of the facility;
- Examine on site records such as DMRs, sampling and laboratory procedures manuals, logs or recordkeeping books, operation and maintenance records;
- Review past and ongoing noncompliance, either noted from facility's reporting or from a previous inspection;
- Interview the facility representative;
- Observe the facility operations;
- Inspect the processes and equipment that handle the wastewater and dispose of the wastewater;
- Review other matters to ensure compliance with applicable law and the permit, if applicable;
- Review the facility's sampling and laboratory procedures, and



- Collect wastewater effluent samples and ambient water or sediment samples that include, where appropriate, collecting “split samples” with the facility for comparison purposes.

**Technical Assistance Inspection**--This type of inspection is conducted on an as needed basis to assist a permittee in complying with a permit. These inspections are specific to a single issue and are intended to ensure a permittee stays in compliance with a permit. This inspection also assists unpermitted facilities to determine if they need a permit.

**Complaint or Discharge Inspection**--This inspection is used to investigate a specific allegation, either received through a citizen complaint or from the facility itself through self reporting of a discharge. These types of inspections occur at both permitted and unpermitted facilities. These inspections also assist ODAFF in identifying facilities that need permits.

**Follow up Inspection**--This inspection is to confirm that a documented compliance problem is addressed by the facility.

### **Compliance Sampling**

ODAFF inspectors collect samples in accordance with applicable sampling, preservation, chain of custody procedures and quality assurance compliance practices. The samples are delivered to the ODAFF Laboratory or OSU Laboratory (Oklahoma State University Soil Water and Forage Analytical Laboratory) for processing. In some cases, when a sampling location is too far from one of these labs to allow for timely processing of samples, ODAFF may utilize private laboratories for processing. In the event a necessary sampling parameter cannot be performed by one of these labs, a private lab may also be utilized.

### **Inspection Reports**

Written inspection reports are made on all facility visits. The inspector records pertinent information and notes from the inspection in a field notebook. The inspector also records findings in narrative notes and may use photographs of certain areas at the facility to document conditions at the facilities in the report when necessary. The inspector completes an AgPDES inspection report using ODAFF's AEMS04 form, which is equivalent to EPA's CAFO NPDES Compliance Inspection Report Form 3560-3, for CAFO inspection, or the most recent approved U.S. Office of Management and Budget (OMB) version and forwards it to the Enforcement Officer. For other types of inspections, appropriate ODAFF or EPA forms are used. The Enforcement Officer reviews the report with the Environmental Programs Manager of the Facility Performance Section.

### **Filing and Transmittal of Inspection Reports:**

The inspection report is provided for the ODAFF files within thirty (30) days of the inspection. It is sent to the Compliance Assistance Team of the Facility Performance Section. The

Administrative Assistant or Administrative Technician copies the inspection report for distribution to the Complaint and Enforcement Coordinator, the responsible inspector, the facility, the enforcement file and EPA. The original report is filed by the Administrative Assistant or Administrative Technician in the enforcement file.

ODAFF transmits a copy of the final inspection report to the facility within thirty (30) days after the inspection or forty five (45) days after the inspection if compliance samples are collected to allow time to process the samples and analyze the results. Copies of final inspection reports are also forwarded to EPA Region 6 personnel responsible for compliance at CAFOs, storm water, and other types of agriculture related permits in Oklahoma if requested. The final inspection report to the facility includes a letter of warning that clearly notes the potential violations identified by the inspector, the permit term or condition violated, the relevant rule or statute violated and a notation that the facility must take corrective actions as listed in the letter of warning, and, when appropriate, a timeline to correct the problem.

Identifying problems during an inspection and recording them on the inspection forms is the first step in the inspection program. Extensive follow up activities are often required where complex issues are involved. These activities may involve additional technical assistance from the inspector or Enforcement Officer, permitting or licensing actions or referral for formal enforcement action. Failure by the facility to address issues raised by a letter of warning prompts the Enforcement Officer or the Complaint and Enforcement Coordinator to respond accordingly consistent with the ERG found in Chapter 5 of the EMS.

### **Review and Data Entry of Inspection Reports**

The report is reviewed by the Enforcement Officer of the Facilities Operations Team for completeness and accuracy. The inspection report is also reviewed by the Complaint and Enforcement Coordinator using the appropriate Significant Noncompliance (SNC) criteria (referring to tables 3-2 and 3-3 of chapter 3 of EMS) for the type of facility inspected and deficiencies are entered into the Violation Summary Log (VSL). All noted permit, rule, order or other violations determined to meet or exceed SNC criteria are referred to the Enforcement Officer and are acted upon by the Enforcement Officer in accordance with the ERG. A separate section in the EMS contains the Enforcement Response Guide which specifically addresses violations detected in the compliance inspections.

State inspection reports are considered complete when the inspector who conducted the inspection sends copies of the report to the permittee and to the main permit file in the ODAFF office. Once it is finalized, a copy of the report and any enforcement action or letter of warning generated pursuant to the ERG is forwarded to the Complaint and Enforcement Coordinator. Upon receipt of the inspection report, the Complaint and Enforcement Coordinator enters the date and type of inspection, notes any violations and enforcement action taken in the VSL and in the AEMS database, and prepares the coding sheets for the enforcement actions for ICIS-NPDES

data entry. Within thirty (30) days following the completion of the inspection report, ODAFF enters the inspection information into ICIS-NPDES

Enforcement actions are also tracked in the database, as well as in ICIS-NPDES. Data entry helps to ensure compliance and serves as a tracking mechanism for all inspectors, engineers, environmental specialists, administrative staff, legal staff, AgPDES Director and AEMS Division Director to rely upon in preparing for subsequent inspections, enforcement actions and all administrative hearings. Both formal and informal methods of communications are used between the various Divisions within the ODAFF as well as with other state and federal offices to ensure communication in case resolution.

In the event corrective action is required for a noted violation, the Enforcement Officer lists the violations and the corrective steps necessary to achieve compliance in a draft order. The draft order is typically reviewed by the Office of General Counsel, the Facility Operations Team supervisor, the AgPDES Director or designee and the AEMS Division Director prior to issuance. A required schedule to correct the violations may be included in the document; however, specific instructions or technical assistance on how to execute the corrective action are not provided to the facility.

### **Citizen Complaints**

The Compliance Assistance Team of the Facility Performance Section maintains a complaint tracking system and receives information about citizen complaints involving AgPDES facilities. The ODAFF's Complaint Protocol is included in this document as Appendix B. Once complaints are received, they are assigned to the inspector assigned to that county for initial investigation or technical assistance. The complaint information is entered into the ODAFF complaint tracking database. The information is used to initiate an investigation and may result in an enforcement action. Once the investigation is complete, the ODAFF notifies the complainant with the results of the investigation, unless no contact information is available, as in an anonymous complaint.

In those cases where a violation does exist, appropriate action is taken to resolve the problem. If enforcement action is needed, the inspector doing the initial complaint investigation forwards the case to the Enforcement Officer or Complaint and Enforcement Coordinator to draft an enforcement action in accordance with the ERG. The draft enforcement action is reviewed by the Environmental Programs Manager, the AEMS Division Director and the AgPDES Director and the final document is signed and issued by the AgPDES Director or designee.

## Appendix A CAFO Areas and Inspectors



**Appendix B**  
**ODAFF's Complaint Protocol**

**Complaint Protocol**

1. ODAFF receives complaint.
  - If Complaint is received by telephone, complete Complaint Form while on the phone with the caller.
  - Place all pertinent information from the caller on the form and include a telephone number and driving directions to the complainant and facility. Read the driving directions back to the complainant to ensure accuracy. Write down detailed, specific directions.
  - In complainant's words, explain the general nature of the complaint (e.g. odor, runoff, carcass disposal, etc.).
  - Include species, and number of animals/poultry involved, if known.
  - Include the time and date that the problem commenced and ended.
2. Anonymous complaints.
  - Inform the complainant that all information in the complaint file is an "open record" of the ODAFF.
  - If the complainant does not want to leave a name or any identifying information, indicate the complainant as anonymous.
  - Explain to the complainant that they must not give a name to the person receiving the complaint if filing the complaint anonymously.
  - If filing anonymously, the complainant will not receive any correspondence relating to the complaint, including final disposition.
  - All files of ODAFF are "open records" and may be requested by anyone, at any time.
3. Indicate the date and time received on all complaints.
4. Assign ODAFF complaint number and assign complaint to the appropriate inspector. Record numbers assigned by other agencies on the complaint form for tracking purposes.
5. Deliver complaint to Division Director or designee.
6. Notify appropriate inspector by telephone immediately and deliver a copy of the complaint and other pertinent information to the inspector via fax or mail.
7. Complete the following within 48 hours of complaint receipt:
  - Log the complaint into the complaint database.
  - Send acknowledgment letter to complainant.

- Create a paper file and place in the “Open Complaints” book
8. Within **ten (10)** working days of the inspector’s receipt of the complaint, unless otherwise instructed by the State Office, the inspector will complete the following tasks:
- Interview the complainant. If complainant cannot be reached after reasonable attempts by the inspector, proceed to the next step.
  - Investigate the complaint within five (5) working days. Investigation includes a formal inspection of the facility and applicable interviews of the operator and employees. **Do not contact the operator or employees prior to arrival at the facility. Take photos if applicable.**
  - Conduct odor investigation if applicable, using ODAFF Supplemental Odor Form.
  - Take applicable samples if the complaint involves allegations of a discharge or contaminated water. Take applicable soil samples if complaint involves allegations of over application of animal or poultry waste. Water or soil samples to be taken by ODAFF only if the investigation reveals evidence of possible pollution/contamination from animal or poultry waste or as approved by ODAFF AEMS Division Director.
  - Deliver samples to appropriate laboratory for analysis.
  - Write report based on all information obtained.
  - Send written report, including properly identified photographs and Supplemental Odor Forms, to ODAFF Oklahoma City Office.
- \* Do not reveal complainant’s identity. If questioned, provide ODAFF address for open records request.
9. Upon receipt of inspector’s report at ODAFF Oklahoma City office:
- Stamp date received.
  - Place original report in complaint file and forward entire file, if possible, to Division Director or designee for review.
  - Update complaint status in complaint database.
10. Initial Complaint Review and Resolution
- Division Director or designee reviews inspector’s report and all pertinent information, including sampling results.
  - Determine if there are any violations.
    - Within seven (7) days of determination, notify operator and mail copy to the inspector.
    - Notification of no violations – Proceed to Step 12 (closing the complaint).
    - Notification of violations may include:
      - Specify corrective action with dates for completion and follow up inspections (See Step 10).
      - Letter of Warning.
      - Refer to ODAFF attorney for determination if enforcement action is necessary.
  - Update computer’s complaint database and the complaint file.

11. Follow up Inspections:

- Based on the specified corrective actions and dates for completion, the inspector visits the site periodically and provides written reports detailing the operator's progress.
- Provide final written report on operator's compliance with corrective action, including all necessary photographs and other documentation.
- Update complaint database and complaint file.

12. Final Complaint Review and Resolution

- If final report indicates the facility is in compliance, close the complaint.
- If final report indicates the facility is not in compliance:
  - Refer to ODAFF attorney for determination if enforcement action is necessary
  - Provide new schedule for corrective action, if appropriate and if approved by Division Director or designee.
- Close the complaint upon completion of all appropriate administrative or legal remedies available to the Department.



13. Closing the complaint:

- Update complaint database and complaint file.
- Move the complaint file to the "closed complaints" drawer and file numerically.
- Notify complainant and operator of final resolution within seven (7) working days of closing the complaint.

Appendix C: form ODAFF's AEMS04



AEMS004 (REV. 2/10)

	<b>Concentrated Animal Feeding Operation (CAFO)</b>  <b>NPDES Inspection Reports</b>	
---	--	---

Department of  
Agriculture

**NPDES Facility Number: O K G 0 1** \_\_\_\_\_  
**LMFO or NON-LMFO:** \_\_\_\_\_

Region 6  
Dallas, Texas

Facility Name \_\_\_\_\_  
 Facility Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Inspector's Name: \_\_\_\_\_  
 Inspector's Signature: \_\_\_\_\_  
 Inspector's Phone: \_\_\_\_\_

Oklahoma CAFO License No: \_\_\_\_\_  
 Legal Description: \_\_\_ 1/4 \_\_\_ 1/4 \_\_\_ 1/4 S \_\_\_ -T \_\_\_ -R \_\_\_  
 On-Site Representative: \_\_\_\_\_  
 On-site Representative's Signature \_\_\_\_\_  
 On-site Representative's Phone: \_\_\_\_\_  
 Name & Address of Responsible Official: \_\_\_\_\_  
 \_\_\_\_\_

Areas Evaluated During Inspection		S=Satisfactory	M=Marginal	U=Unsatisfactory	N=Not Evaluated
_____ - Permit	_____ - Self-Monitoring	_____	_____	_____	_____ - Pollution Prevention
_____ - Records	_____ - Laboratory	_____	_____	_____	_____ - Operation & Maintenance
_____ - Facility Site Review	_____ - Other	_____	_____	_____	_____ - Compliance Schedule
					_____ - Solid Waste Disposal
					_____ - LMFO Requirements
					_____ - Liquid Waste Disposal

## PART I FACILITY OPERATION INFORMATION AND PERMIT VERIFICATION

1. Number and Type of animals confined and maintained at this facility.

Type of CAFO	Number of Animals	Factor	Animal Units
<input type="checkbox"/> Dairy Cattle	_____	x 1.4	_____
<input type="checkbox"/> Slaughter/Feeder Cattle	_____	x 1.0	_____
<input type="checkbox"/> Swine (over 55 lbs.)	_____	x 0.4	_____
<input type="checkbox"/> Swine (under 55 lbs.)	_____	x 0.1	_____
<input type="checkbox"/> Horse	_____	x 2.0	_____
<input type="checkbox"/> Sheep or Lambs	_____	x 0.1	_____
<input type="checkbox"/> Chickens	_____		_____
<input type="checkbox"/> Turkey	_____		_____
<input type="checkbox"/> Ducks	_____		_____
<input type="checkbox"/> Other _____	_____		_____
		Total Animal Units	_____

2. Number of days animals are stabled/confined and fed/maintained over any 12-month period:

☐ 90 consecutive Days or more    ☐ Less than 90 Days  
☐ 45 Days or more    ☐ Less than 45 Days

3. What is the 25-year, 24-hour rainfall amount for location: \_\_\_\_\_ inches.

4. Name of surface water (stream, river, lake, canal) to which a discharge from facility would be received: \_\_\_\_\_

5. Do animals confined on the CAFO come into direct contact with Waters of the U.S.:    ☐ Yes    ☐ No

6. Is facility meeting compliance schedules:    ☐ Yes    ☐ No    ☐ N/A

Narratives in all parts must be completed and commented on whether the findings are satisfactory, marginal, or unsatisfactory.

Narrative for Part I: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ORIGINAL – OFFICE    YELLOW – INSPECTOR    PINK – FACILITY

DATE: \_\_\_\_\_

FACILITY NAME \_\_\_\_\_

## PART II RECORD KEEPING

### 1. Operation and Maintenance Records:

- A. Weekly measure of water level in retention facility: ☐ Yes ☐ No  
B. Daily rainfall records from on-site rain gauge: ☐ Yes ☐ No  
C. Log of removal of manure sold or given away: ☐ Yes ☐ No ☐ N/A  
D. Date, location and amount of manure or retention basin waste applied to cropland: ☐ Yes ☐ No ☐ N/A  
E. Weekly, quarterly and annual inspection reports properly signed and dated: ☐ Yes ☐ No

### 2. Information Required to be Maintained at the Site:

- A. Copy of general permit: ☐ Yes ☐ No ☐ N/A  
B. Copy of Notice of Intent: ☐ Yes ☐ No ☐ N/A  
C. Finding of No Significant Impact\*: ☐ Yes ☐ No ☐ N/A

\* Documentation of file at EPA Region 6, Dallas, Texas for facilities in existence before February 10, 1993.

### 3. Sampling Records:

- A. Is water sampling current: ☐ Yes ☐ No  
B. Is soil sampling current: ☐ Yes ☐ No  
C. Is effluent sampling current: ☐ Yes ☐ No

### 4. Discharge Monitoring Records:

- A. Has facility had a discharge: ☐ Yes ☐ No  
If yes, specify details of the discharge in narrative below.  
B. Discharge reported to EPA: ☐ Yes ☐ No ☐ N/A  
C. Description and cause of discharge: ☐ Yes ☐ No ☐ N/A  
D. Period of discharge, including exact date and times: ☐ Yes ☐ No ☐ N/A  
E. Sampling date, time, and flow path: ☐ Yes ☐ No ☐ N/A  
F. Individual collecting the sample: ☐ Yes ☐ No ☐ N/A  
G. Analysis dates and times: ☐ Yes ☐ No ☐ N/A  
H. Analytical methods/techniques used: ☐ Yes ☐ No ☐ N/A  
I. Analytical results: ☐ Yes ☐ No ☐ N/A  
J. Record of steps taken to reduce, eliminate and prevent recurrence of discharge: ☐ Yes ☐ No ☐ N/A

Narrative for Part II: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## PART III WASTE HANDLING, TREATMENT AND MANAGEMENT OPERATIONS

1. Based on information available on the day of inspection are solid and liquid wastes handled properly to prevent surface and groundwater contamination: ☐ Yes ☐ No  
If no, explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Based on information available on the day of inspection, has liquid retention facility been maintained at a level to retain a 25-year 24-hour rainfall event: ☐ Yes ☐ No  
If no, explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

FACILITY NAME \_\_\_\_\_

**PART IV**  
**POLLUTION PREVENTION PLAN (PPP)**

1. PPP on file, signed, updated, maintained and implemented: ☐ Yes ☐ No
2. Description of Potential Pollutant Sources:
  - A. A map indicating:
    1. Facility site: ☐ Yes ☐ No
    2. Outline of drainage area and water bodies within one mile: ☐ Yes ☐ No
    3. Topography: ☐ Yes ☐ No
  - B. List of significant materials used, stored and disposed of at CAFO: ☐ Yes ☐ No
  - C. List of any significant spills, such as pesticides, cleaning agents, fuel and other pollutants: ☐ Yes ☐ No ☐ N/A
    1. All existing sampling and analytical data for spills: ☐ Yes ☐ No ☐ N/A
    2. Spill contingency plan: ☐ Yes ☐ No

3. Pollution Prevention Plan Implementation Narrative:

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

4. Waste Management Controls:
  - A. Permanent marker installed and maintained within the lagoon to indicate water level required for a 25-year, 24-hour rainfall event: ☐ Yes ☐ No
  - B. Rain gauge installed and maintained: ☐ Yes ☐ No
  - C. Design standards for retention facility embankments and schedule for liquid waste removal: ☐ Yes ☐ No
  - D. Liner requirement information:
    1. Documentation and certification of no hydrologic connection: or ☐ Yes ☐ No
    2. Liner constructed in accordance with NRCS Technical Note 716 or its current equivalent: ☐ Yes ☐ No
  - E. Adequate wastewater removal and land application:
    1. Irrigated wastewater discharged to a water of the U.S.: ☐ Yes ☐ No
    2. Irrigating when the ground is frozen, saturated or while it is raining: ☐ Yes ☐ No
    3. Adequate equipment or land application area provided: ☐ Yes ☐ No

5. Waste Management From Generation to Disposal Narrative:

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---





## **ENFORCEMENT EVALUATION**

Enforcement is used to ensure compliance with permits, federal and state laws and rules. Enforcement evaluation is the process whereby the violations and discrepancies that are identified during the compliance evaluation procedures are reviewed to evaluate the type of enforcement response needed. This review is normally conducted by AEMS staff, although consultation with legal counsel may be necessary. In determining appropriate response, consideration is given to:

- the nature of the violation (reporting, compliance schedule, discharge, etc.);
- the duration and frequency of the violation;
- the environmental and human health impact of the violation; and
- the compliance history of the violator.

The Enforcement Response Guide [Table 5-1 for Agriculture Pollutant Discharge Elimination System (AgPDES) Program Enforcement Response Guide] for the AgPDES program in general was developed to serve as a reference in determining the appropriate level of enforcement action to be taken to address various types of violations. Upon the assessment of the facts of a specific case, deviations from the guidance may legitimately occur but must be justified in the permanent record.

### **General Routing of Information**

When the Complaint and Enforcement Coordinator identifies noncompliance that meets or exceeds the SNC or otherwise requires enforcement action, the Complaint and Enforcement Coordinator reviews the file for completeness and compiles the relevant information. If formal enforcement action is required to address the noncompliance, the file is forwarded to the Enforcement Officer for technical review. All cases recommended for formal enforcement action in accordance with the ERG are discussed at the NCR meeting. The Enforcement Officer or Complaint and Enforcement Coordinator coordinates closely until the issuance of an NOV (Notice of Violation), CO (Compliance Order), ACO (Administrative Compliance Order), ACPO (Administrative Compliance and Penalty Order), filing of a lawsuit or other formal enforcement document is prepared, served, and filed. The Complaint and Enforcement Coordinator initiates informal enforcement actions for reporting violations and for effluent violations that do not meet or exceed the SNC. Upon recognition of any violation, the Complaint and Enforcement Coordinator records in the Violation Summary Log the violation and any enforcement action taken.

Often, the Enforcement Officer or Complaint and Enforcement Coordinator assists in preparing the information necessary for the enforcement action, including the facts of the case, and participates in drafting documents and negotiations. However, in all formal enforcement cases, review and approval of the enforcement documents by the AEMS Division Director, the AgPDES Director or designee, and the OGC is required. When a respondent obtains legal counsel, the Enforcement Officer and the Complaint and Enforcement Coordinator notify the

OGC to discuss how future communications with the respondent and their legal counsel will be handled. If the respondent does not have legal counsel, the Enforcement Officer or Complaint and Enforcement Coordinator has primary responsibility for contacts with the respondent; however, any agreements are tentative and subject to approval by the AgPDES Director, AEMS Division Director and the OGC.

Specifically, the Enforcement Officer prepares the initial drafts of NOV, COs, ACOs or ACPOs. The Enforcement Officer ensures the draft document is accurate as to the recitation of facts indicating that the violations occurred, when the violation occurred, the nature of the violation, and other pertinent information. The Enforcement Officer identifies permit conditions, if applicable, and provisions of any previous orders and applicable rules violated. The Enforcement Officer also proposes compliance schedules, information requests or other requirements for the enforcement order. The Enforcement Officer determines the proper respondent to be named in the enforcement action and the registered agent for service of process. The proposed enforcement document is routed to the supervisor of the Facility Performance Section, then to the AEMS Division Director and AgPDES Director or designee for review and approval.

The AEMS Division Director and the AgPDES Director or designee review the draft enforcement document. The AgPDES Director also requests the OGC to provide legal review and approval. The OGC reviews legal citations for violations and the findings of fact for adequacy or needed revisions, prepares conclusions of law and provides overall legal review of the terms of the enforcement document and the grounds for issuance. Any deficiencies discovered by the OGC are discussed and resolved with the Enforcement Officer, the Complaint and Enforcement Coordinator, the Facility Performance Section supervisor, the AEMS Division Director or the AgPDES Director as appropriate. After OGC approval, the document is finalized for signatures and issuance.

For some formal enforcement actions, the OGC takes a lead role in preparing the enforcement documents and preparing the case. The OGC handles the drafting of documents for filing a civil lawsuit, requesting administrative search warrants, subpoenas, depositions, and the like, and potentially referring a case to the District Attorney or Attorney General. In these cases, close coordination is required between the OGC and the Enforcement Officer or Complaint and Enforcement Coordinator. The OGC provides the AEMS Division Director and the AgPDES Director or designee with regular status reports on cases referred to the District Attorney or Attorney General.

Any emergency orders or settlement agreements are drafted by the OGC and signed by the AgPDES Director or designee. Any permit revocation or modification is signed by the AgPDES Director or designee.

### **Enforcement Actions**

Enforcement actions are based on referrals from the field inspectors in the Facility Performance Section, staff of the Permits Licensing and Registration Section, file review activities or from other divisions within ODAFF. For each enforcement action, there is extensive staff coordination. It is the responsibility of the legal staff of ODAFF's Office of General Counsel (OGC), the AEMS Division Director, the AgPDES Director or designee, the Enforcement Officer and the Complaint and Enforcement Coordinator to:

- select the appropriate level of enforcement action;
- develop the presentation and facts for the case;
- ensure that a satisfactory resolution is achieved; and
- complete and satisfactorily close out the enforcement action.

The two categories of enforcement actions are administrative and judicial.

### ***Administrative Enforcement***

Administrative enforcement mechanisms are employed in an effort to resolve compliance problems quickly and minimize resource commitments. Methods used to obtain compliance include, but are not limited to:

- telephone calls by the Complaint and Enforcement Coordinator to the facility<sup>1</sup>;
- requests for information prepared and signed by the AgPDES Director or designee;
- letters of warning prepared and signed by the Enforcement Officer that specify the alleged violation and require a response within a specified period of time; and
- Notices of Violations (NOVs) signed by the AgPDES Director or designee that identify site specific violations and the statutory or regulatory basis for the NOV.

Failure to respond to a letter of warning results in issuance of an NOV. In conjunction with the issuance of an NOV, ODAFF may issue an Administrative Compliance Order (ACO) to cease and desist from any violations, and may require compliance with terms of the order by a certain date. If an enforcement action is not complied with and no appeal is filed, it is a violation of the AgPDES Act.

### ***Judicial Enforcement***

Judicial enforcement consists of civil or criminal enforcement actions. Typically, cases are referred for judicial enforcement only if informal and administrative enforcement actions are unsuccessful. However, in certain situations, such as cases of chronic or otherwise serious pollution, the case may be referred directly to the OGC for judicial enforcement. It is then at the

---

<sup>1</sup> The CWA regulates the conduct of persons, which includes the owners and operators of facilities and activities. To improve readability, the words "facility" or "facilities" are intended in this chapter to cover the owners or operators of facilities and activities, both permitted and unpermitted, within ODAFF's jurisdiction.



discretion of the OGC to seek enforcement penalties or injunctive relief if the violations are not corrected or eliminated. When a violation is corrected or eliminated, any settlement agreement or consent decree may reflect that the violation was corrected or eliminated to the satisfaction of the ODAFF.

### **Monthly Enforcement Meetings**

#### ***Noncompliance Review Meetings (NCR)***

Enforcement actions are generated by inspections, complaint investigations, and follow up inspections or reviews. AEMS inspectors complete weekly activity reports that identify suspected violations and include a brief description of violations discovered. The weekly activity reports are sent to the AEMS Division Director for review. Copies of the weekly activity reports are also sent to the Facility Performance Section Supervisor, the Enforcement Officer and AgPDES Director or designee. The suspected violations are included in the agenda for a monthly scheduled enforcement staff meeting called the Noncompliance Review Meeting (NCR) between the Enforcement Coordinator, the Enforcement Officer, the Facility Performance Section Supervisor, the AEMS Division Director, and on occasion the AgPDES Director or designee. In addition, all complaint and inspection reports are reviewed by the Complaint and Enforcement Coordinator as received and violations are identified and referred as agenda items for discussion. A list of anticipated compliance deadlines due in the forthcoming month is also discussed. This list includes the names of facilities being tracked in the enforcement portion of the ODAFF's database, with compliance deadlines, corrective action schedules and penalty payments due.

After review and discussion at the monthly enforcement staff meeting, the AEMS Division Director may decide that enforcement action is required. The Complaint and Enforcement Coordinator enters the facility information into the ODAFF's database for enforcement actions and subsequent case management. Also, the AEMS Division Director may decide that additional information or investigation is needed prior to an enforcement determination and assigns an appropriate AEMS inspector. This may include additional field or technical work or legal analysis to determine if sufficient evidence exists to proceed with an enforcement action. If the AEMS Division Director finds after review and discussion or further investigation that the facility is in compliance, the Complaint and Enforcement Coordinator is directed to change the facility's "Enforcement Status" in the ODAFF's database to No Action Required, with a brief written explanation for the change.

In situations where immediate action is required to protect the public health or safety or the environment, emergency enforcement action is taken to address the situation without waiting for the completion of this review process. Such action may include the issuance of an Emergency Order or the seeking of a Temporary Restraining Order in one of Oklahoma's district courts.

A list of facilities, currently out of compliance but not yet subject to formal enforcement action (the "NCR List"), is maintained by the Complaint and Enforcement Coordinator and updated as

changes occur. The list includes existing cases where informal enforcement actions have not achieved compliance and referral for escalated formal enforcement action is needed. The description of the noncompliance for each facility is included in the list.

The NCR list is distributed to the participants mentioned above by the Complaint and Enforcement Coordinator prior to the NCR meeting and updates are discussed at the meeting. During these meetings, general compliance issues and policies are also discussed, as well as any new cases of noncompliance at facilities needing to be placed on the NCR List.

Particular compliance problems, including unauthorized discharges or bypasses at individual AgPDES facilities, are also discussed, and an update is provided regarding site visits, file review, DMR review, complaint investigations, correspondence, and any other information available to help in the investigation of noncompliance. Facilities with acceptable corrective efforts are removed from the NCR list until the facility SNC criteria is no longer exceeded. After removal from the list, routine compliance monitoring resumes. Table 3-2 of chapter 3 of the EMS shows the AgPDES Significant Noncompliance Criteria for CAFOs or Other Agriculture Related Operations and Table 3-3 shows Agriculture Pollutant Discharge Elimination System (AgPDES) Program Storm Water Significant Noncompliance Criteria.

### ***Formal Enforcement Meetings***

In cases where facility SNC criteria cannot be promptly corrected through informal enforcement, appropriate formal enforcement action is usually recommended and discussed at the NCR meeting. Cases where formal enforcement action is recommended are removed from the NCR List and are placed on a separate list, called the Formal Enforcement Action List. The Complaint and Enforcement Coordinator is responsible for maintaining and updating this list.

A "Formal Enforcement Meeting" is held monthly to track the status of formal enforcement actions already pending or on any AgPDES Permit Compliance Schedules. The meeting is attended by the Enforcement Officer in the Field Operations and Enforcement Team, the Complaint and Enforcement Coordinator, the supervisor of the Facility Performance Section, the AEMS Division Director and the AgPDES Director. Formal enforcement action is evaluated and taken in cases of violations of the facility SNC criteria. The action taken is documented for all facility SNC violations. At the meeting, the Enforcement Officer provides information and documentation concerning facts and evidence supporting the case. The staff discuss the elements, facts, and violations that a draft enforcement document should contain, and either the Complaint and Enforcement Coordinator or Enforcement Officer prepares the initial draft document as appropriate and establishes a time frame for review and issuance. Once a formal enforcement action is undertaken, the facility is placed on the formal enforcement list.

In addition to cases where violations are suspected, the meeting participants discuss a list of facilities subject to enforcement action, whether by an NOV, ACO, ACPO, CO or other action. If there is a compliance schedule, report requirement or other deadline included in the formal enforcement document, the status of compliance is provided by the assigned inspector to the

Enforcement Officer and the Complaint and Enforcement Coordinator prior to the meeting. Additional information, inspection, corrective action and remedial action needs are identified.

Violations of compliance schedules or other portions of the formal enforcement actions are discussed to determine need for supplemental or escalated enforcement action. Facilities in compliance with the requirements in the formal enforcement document are reviewed for potential problems in satisfying remaining tasks required in the order. Facilities satisfactorily completing all elements of the enforcement document are also identified and closure of the case and removing the facility from the list is discussed. If the facility is compliant with SNC criteria and is in compliance with stated requirements in any formal enforcement document, including COs and ACOs and any compliance schedule, routine compliance monitoring oversight is usually reinstated.

If environmental damage resulted but was not addressed in the issued enforcement action, remediation and restoration of the damage is evaluated. In situations like these, administrative penalties are sought in appropriate cases even if the facility is returned to routine compliance status.

### **Types of Violations**

#### ***Minor or No Violation***

The results of routine or other inspections or complaint investigations that reveal no violations are entered into the ODAFF's database as "No Action Required."

When relatively minor violations are discovered but the violator shows a willingness and ability to correct the problem, enforcement action is usually not requested. However, violations are noted in the final inspection report and in the report's cover letter. The violator is also informed in the cover letter of actions necessary to return to compliance before the next annual inspection or before a more immediate follow up inspection. Any relatively minor violations that are not corrected through this process by the time of the next inspection become subject to escalated enforcement.

The results of complaint investigations are provided to the complainant, provided that the complainant is not anonymous. In the case of complaints, the facility generating the complaint and the complainant, if known, are informed of violations in the final complaint investigation report. The facility and complainant are also informed in the final complaint investigation report of those actions the permittee must take to return to compliance. Finally, if the complaint is a written complaint, a letter summarizing the results of the investigation is issued to the complainant with the AEMS Division Director's signature.

#### ***Serious Violations***

Routine inspections that reveal violations are noted in the final inspection report and in the cover letter. In addition, the inspection report and the cover letter describe the corrective actions necessary to return to compliance. Depending on the nature or degree of seriousness or gravity of the violation, a letter of warning may be issued, an administrative or judicial enforcement action may be commenced or an emergency order may be issued. For minor violations, the inspector may direct the permittee to return to compliance before the next regularly scheduled inspection or a more immediate follow up inspection. If the subsequent inspection shows that the violation revealed in the previous inspection is still not resolved, the inspector proceeds to escalate enforcement. Enforcement options are discussed in the Enforcement Response Guide.

### ***Unresolved, Repeated or Serious Violations***

If the violation is not resolved within the time frame mandated by ODAFF in its initial enforcement response, if the violation is frequent or serious, or if the facility indicates an inability or unwillingness to return to compliance, the inspector describes the violations and brings them to the attention of the Enforcement Officer and the Facility Performance Section supervisor who will refer the matter for discussion at the next monthly NCR meeting. During the meeting, the Enforcement Officer and Facility Performance Section supervisor confer with the AEMS Division Director about appropriate escalated enforcement actions in accordance with the Enforcement Response Guide.

### **Addressing Violations**

There are several types of enforcement documents prepared by ODAFF. The criteria for determining which type of enforcement document is used is based on the degree of seriousness of the violation and the degree of environmental or health effect. The Significant Noncompliance (SNC) Policy for the Clean Water Act for violations within ODAFF's jurisdiction associated with CAFOs or other agriculture related operations and storm water point sources is also used to evaluate enforcement decisions.

The Complaint and Enforcement Coordinator is responsible for informing the Enforcement Officer of reporting violations that do not meet or exceed SNC criteria so that enforcement actions can be initiated by the Enforcement Officer. Upon recognition of any violation, the Complaint and Enforcement Coordinator logs the violation and any enforcement action taken in the Violation Summary Log.

The Enforcement Officer prepares the initial draft of warning letters, NOV's, CO's, ACO's, ACPO's and Emergency Orders reciting the facts indicating the violations occurred, when it occurred, the nature of the violation, verification of when it occurred and other pertinent information. The Enforcement Officer also recites permit conditions, provisions of previous orders and applicable regulations or statutory provisions violated. Any compliance schedules, information requests or other requirements may be proposed in the draft document.

Once the document is drafted, a referral form with the reviewer's name and a space for initials and date is prepared by the Enforcement Officer and is attached to the draft enforcement document. The reviewers are the Facility Performance Section supervisor, the AEMS Division Director, the AgPDES Director or designee and the assigned attorney in the OGC. They review and approve the documents for accuracy and content. All enforcement actions, whether formal or informal, are reviewed by those on the referral form. The proposed enforcement document is initially routed to the Facility Performance Section supervisor, the AEMS Division Director and the AgPDES Director or designee for review, comment and approval. After the initial review by the Facility Performance Section supervisor, AEMS Division Director and AgPDES Director or designee, the OGC attorney provides legal review and approval. The attorney reviews legal citations for violations and the findings of fact and conclusions of law for adequacy or needed revisions and provides overall legal review of the terms of the enforcement document and the grounds for issuance. Problems discovered by the OGC are discussed and resolved with the Enforcement Officer, Facility Performance Section supervisor, AEMS Division Director and AgPDES Director or designee. Any changes or corrections are routed back to the Enforcement Officer for editing, formatting and other minor corrections. After OGC approval, the document is finalized for signature and issuance. The AgPDES Director or designee signs and issues NOV's and other formal enforcement actions. The Enforcement Officer signs and issues letters of warning only.

The enforcement document and cover letter is given to the Administrative Assistant in the Compliance Assistance Team of the Facility Performance Section for copying and mailing to the facility. Copies of all enforcement documents are given to the Complaint and Enforcement Coordinator and the Enforcement Officer. Enforcement documents are sent by Certified Mail to the facility. The issuance date, violations and compliance schedules, if any, contained in each enforcement document are entered in the ODAFF's database by the Complaint and Enforcement Coordinator and a copy of the document is filed in the central office files by the Administrative Assistant.

The facility receives a copy of the formal or informal enforcement document and the original cover letter after they are finalized and mailed. Administrative Orders are legally enforceable instruments issued to anyone in violation of AgPDES. As an alternative or escalated action, ODAFF may seek a judicial order to address the violations. Each enforcement order or judicial order cites the relevant statute, rules or permit requirements, the violations of the statute, rules or permit which have occurred and the actions the permittee must take to come into compliance as well as a time frame for these actions. The enforcement order may also contain extended compliance schedules, penalties for past violations and stipulated penalties for failure to comply with the schedules of compliance.

For some formal enforcement actions, the assigned attorney from OGC takes the lead role in preparing the draft enforcement documents or preparing a case. The OGC handles the drafting of documents for filing a civil lawsuit, requesting administrative search warrants, subpoenas, depositions and in referring a case to the District Attorney or Attorney General. In these cases, close coordination is required between OGC and the Enforcement Officer. The OGC provides

the AEMS Division Director and AgPDES Director or designee with regular status reports on civil cases and matters referred to the District Attorney and Attorney General.

If a respondent obtains legal counsel, the Enforcement Officer notifies the assigned attorney to discuss how future communications with the respondent and their legal counsel are handled. If the respondent does not have legal counsel, the Enforcement Officer has the primary responsibility for contacts with the respondent but any agreements are tentative and subject to approval by the AgPDES Director or designee, AEMS Division Director and OGC.

Once the permittee fulfills all requirements of the enforcement document and if further enforcement action is not pending, the case is closed out by the Complaint and Enforcement Coordinator, removed from the enforcement order list and noted in ODAFF's database.

### ***Informal Enforcement Actions***

#### **Verbal Notification or Request (telephone call)**

Depending on the circumstances of the violation, the Complaint and Enforcement Coordinator may use telephone contact as a cost effective means of obtaining information and resolving isolated or infrequent violations. Prompt response to violations helps deter future violations.

The Complaint and Enforcement Coordinator notes the date and time, the person contacted, and the substance of the conversation. A "Record of Communication" memo is prepared and is placed in the facility's compliance file as evidence if additional or escalated enforcement action becomes necessary. It also notes if a representative cannot be contacted by telephone or fails to return phone calls.

#### **Letters of Warning**

A letter of warning is issued based on the results of an inspection, complaint investigation or file review, together with analysis of supporting documentation including field reports and legal analysis and discussion of enforcement at the monthly enforcement staff meeting. A letter of warning is employed first to try to resolve the discovered compliance problem.

A letter of warning is typically issued for a first time violation, a minor violation of moderate to low seriousness or a minor violation of medium to low effect. Letters of warning are issued by Certified Mail. A letter of warning includes a brief statement of the nature of the violation, the statute and rules violated, the facts relied upon in concluding that a violation occurred, and the requirements that must be met in order for the facility to return to compliance, including a schedule for returning to compliance or a deadline for returning to compliance. The date the

letter of warning is sent and any date or deadlines for compliance are entered into the ODAFF's database.

### ***Formal Enforcement Actions***

#### **Notice of Violation (NOV)**

Notices of Violation are considered more serious enforcement actions than telephone notifications but less serious than administrative orders. NOV's are primarily issued in response to inspection findings or discharge and reporting violations.

As with the letter of warning, the Notice of Violation includes:

- a brief statement of the nature of the violations that occurred;
- the statute and rules violated;
- the facts relied upon in concluding the violation occurred;
- the requirements to meet in order for the facility to return to compliance, including a schedule of compliance or a deadline;
- a warning that further enforcement action may be taken for failure to comply or remain in compliance; and
- a warning that issuance of the NOV does not preclude further enforcement action for the particular violation.

The NOV is sent via Certified Mail to the respondent by the Complaint and Enforcement Coordinator. The Administrative Assistant makes copies for the Complaint and Enforcement Coordinator, the Enforcement Officer and the CAFO file. The NOV and the date sent are entered into the ODAFF database as well as the schedule of compliance dates imposed in the NOV. The appropriate inspector is assigned to reinspect the facility on those dates or immediately thereafter. As noted above, every inspection date is entered into the ODAFF's database.

#### **Compliance Order (CO)**

The CO is an enforceable order issued by ODAFF establishing steps that the violator must undertake to abate a violation. It clearly states the permit violations, rule and statutory violations and requires compliance immediately or within a specified time frame. It contains terms agreed upon between the ODAFF and the violator and is signed by representatives of both parties. The CO may or may not assess a penalty for future noncompliance with the requirements of the order.

The CO is sent Certified Mail to the respondent by the Complaint and Enforcement Coordinator. The Administrative Assistant makes copies for the Complaint and Enforcement Coordinator, the Enforcement Officer, and the CAFO file. The CO and the date sent are entered into the ODAFF database as well as the schedule of compliance dates imposed in the CO. The appropriate

inspector is assigned to reinspect the facility on those dates or immediately thereafter. As noted above, every inspection date is entered into the ODAFF database.

#### Administrative Compliance Order (ACO)

Should the facility fail to meet the requests of the letter warning or NOV, the ODAFF may take escalated enforcement action by issuing an ACO. The ACO cites specific violations of statutes, rules or the permit and requires compliance within a reasonable period of time.

The ACO is sent Certified Mail to the respondent by the Complaint and Enforcement Coordinator. The Administrative Assistant makes copies for the Complaint and Enforcement Coordinator, the Enforcement Officer and the CAFO file. The ACO and the date sent are entered into the ODAFF database as well as the schedule of compliance dates imposed in the ACO. The appropriate inspector is assigned to reinspect the facility on those dates or immediately thereafter. As noted above, every inspection date is entered into the ODAFF's database.

#### Administrative Compliance and Penalty Order (ACPO)

The ACPO is issued for any escalated action taken for the violation of an ACO or CO provision. It describes permit, rule and statutory violations, requires compliance within a specific timeframe and assesses a penalty. An amount for penalties is usually set for future noncompliance with the requirements of the ACPO and a separate amount of penalties is proposed for the violations that have already occurred.

The ACPO is sent Certified Mail to the respondent by the Complaint and Enforcement Coordinator. The Administrative Assistant makes copies for the Complaint and Enforcement Coordinator, the Enforcement Officer and the CAFO file. The ACPO and the date sent are entered into the ODAFF database as well as the schedule of compliance dates imposed in the ACPO. The appropriate inspector is assigned to reinspect the facility on those dates or immediately thereafter. As noted above, every inspection date is entered into the ODAFF's database.

#### ***Judicial Enforcement***

This type of enforcement consists of civil or criminal actions. Civil actions involving the judicial system usually begin after the AgPDES Director and AEMS Division Director exhaust available administrative remedies and compliance is not achieved, or when other recourse beyond administrative remedies (e.g., civil penalties or criminal fines), is sought. Generally, the ODAFF seeks corrective actions through civil and criminal referrals to its OGC, which files all civil actions or requests the Attorney General to assist. Criminal actions may be filed by the Attorney General or the appropriate District Attorney. Only in unusual circumstances, such as taking enforcement on owners or facilities that are in multiple states or multiple media cases, will the ODAFF refer enforcement cases to EPA.



Legal assistance is provided by ODAFF attorneys in the OGC. The Enforcement Officer submits a request for legal assistance from OGC, signed by the AEMS Division Director, along with a brief description of compliance history and any enforcement issues. The case is assigned to an attorney and that attorney is responsible for identifying appropriate deadlines, maintaining the legal enforcement file, research and drafting, scheduling of hearings and other legal representation.

Upon assignment of a case, the attorney receives a complete packet of information on the facility. The attorney meets regularly with the AEMS Division Director, AgPDES Director and Enforcement Officer regarding the case and advises on any additional investigations that should be performed for the enforcement case. The attorney prepares the formal legal documents, including any penalty calculations and helps staff prepare for any settlement conferences or formal hearings.

### Special Investigations

If the Enforcement Officer or the OGC determines that further investigation is needed prior to initiating formal enforcement action or as an adjunct to the action, the Enforcement Officer makes a request to the Facility Performance Section Supervisor. Additional written documents or other readily available information is requested from the violator, a public office such as the county clerk, or a witness. In addition, an NOV, order or subpoena may be used to require the violator or other persons to produce information or records. Photographs or video of the site, evidence, ongoing violations, and testimony of witnesses are obtained by the Enforcement Officer or the AEMS Inspector to assist in development of the case. These investigatory mechanisms are utilized with the advice and assistance of the OGC.

### Penalty Policy

The EPA penalty policy and formulas provide guidance to ODAFF personnel in setting recommended civil penalties for AgPDES violations. The purpose of the policy is to provide consistency in how penalties are calculated.

The penalties calculated are consistent with applicable EPA penalty policies. As an enforcement action proceeds, ODAFF may adjust its recommendation if new information changes the basis for the calculation under the penalty formula. ODAFF recognizes that if a case is litigated in court, the court assesses the penalties. ODAFF also recognizes that any calculation of penalty done as part of a settlement penalty calculation is a legal evaluation, subject to the attorney-client and attorney work product privilege.

Where administrative or civil penalties are sought, the amount of the penalty is also determined using EPA's Penalty Policy and the provisions of Oklahoma statutes. Factors considered in calculating and assessing penalties include, but are not limited to:

- the nature, circumstance and gravity of the violation;

- the economic benefit, if any, resulting to the respondent or defendant from the violation;
- the history of violations; and
- the respondent's or defendant's degree of culpability and good faith compliance efforts.

EPA's Ben and Abel model for calculating and assessing penalties is employed for penalty calculation.

When ODAFF refers an AgPDES violation to the state Attorney General's office with a request that a court complaint be filed, ODAFF may include a recommended penalty settlement figure for each violation. In no case does a penalty for a single violation exceed that allowed by Oklahoma statute. The referral is a privileged attorney-client communication and is therefore confidential.

ODAFF evaluates every penalty with a view toward litigation and attempts to ascertain the maximum civil penalty a court or administrative adjudicatory body might be likely to award if the case proceeds to trial or hearing. ODAFF may reduce the amount of civil penalty it will accept in any settlement.

ODAFF's penalty calculations are documented in a confidential enforcement memorandum when an ACPO with a proposed penalty is submitted to the AEMS Division Director and AgPDES Director or designee for signatures prior to issuance. Each memorandum is kept in the appropriate confidential enforcement file.

**Table 5-1 \***  
**Oklahoma Department of Agriculture, Food, and Forestry**  
**Agriculture Pollutant Discharge Elimination System (AgPDES) Program**  
**Enforcement Response Guide**  
(also refer to Tables 3-2 & 3-3 of chapter 3: Compliance Review  
for Significant Non Compliance Criteria)

<b>AgPDES PROGRAM COMPONENT</b>	<b>NONCOMPLIANCE</b>	<b>CIRCUMSTANCES</b>	<b>RANGE OF RESPONSE</b>
<b>SAMPLING, MONITORING AND REPORTING</b>			
	Failure to sample, monitor or report (routine reports, DMRs)	Isolated or infrequent	Phone call Warning letter Notice of Violation (NOV) Request that report be submitted immediately
		Permittee does not respond to NOV, does not follow through on verbal or written commitments or commits frequent violations	Consider Compliance Order (CO), Administrative Compliance Order (ACO), Administrative Compliance and Penalty Order (ACPO), judicial action or referral for criminal prosecution.
	Failure to sample, monitor or report	Any instance	CO, ACO, ACPO, judicial action
	Failure to sample, monitor or report (one time requirement)	Any instance	NOV, CO, ACO, ACPO, or judicial action
	Failure to file 24-hour report for effluent violations	No known environmental harm	NOV, CO, ACO, ACPO, or judicial action
		Known environmental harm	CO, ACO, ACPO, or judicial action. Consider referral for criminal prosecution
	Failure to submit report with DMRs that explain other violations	Isolated or infrequent	Phone call, warning letter or NOV
		Frequent or continued violations	NOV, CO, ACO, ACPO, or judicial action
	Minor sampling, monitoring or	Isolated or infrequent	Phone call, warning letter, NOV. Corrections to be

ODAFF AgPDES  
Enforcement Management System  
Chapter 5: Enforcement Evaluation  
September 7, 2012

	reporting deficiencies		made in next submittal
		Frequent or continued violations	NOV, CO, ACO or ACPO with penalty
	Major or gross sampling, monitoring or reporting deficiencies	Isolated or infrequent	NOV, CO, ACO, ACPO. Corrections to be made in the next submittal.
		Frequent or continued violations	NOV, CO, ACO, ACPO or judicial action.
	Reporting false information	Any instance	Consider criminal prosecution. If not, judicial action
	Failure to install monitoring equipment	Continued	NOV, CO, ACO, ACPO or judicial action
<b>SIGNIFICANT NON COMPLIANCE CRITERIA (ref. to Table 3-2 &amp; 3-3 of chapter 3: Compliance Review).</b>			
	Significant unauthorized discharge	Isolated or infrequent	Warning letter or NOV with corrections to be made within 5 days. CO, ACO, ACPO, judicial action.
		Frequent or continued violations	NOV, CO, ACO or ACPO with penalty, judicial action, consider criminal prosecution
	Deficiencies in implementing terms and condition of the permit and the NMP/CNMP/AWMP	Isolated or infrequent	Phone call, warning letter, NOV, NOV, CO, ACO, ACPO or judicial action.
		Frequent or continued	NOV, CO, ACO or ACPO with penalty, judicial action
<b>PERMIT COMPLIANCE SCHEDULES</b>			
	Missed interim date	Will not cause late final date or other interim date	Phone call, warning letter, NOV, CO or ACO
		Will result in other missed interim dates but the violation is for good or valid cause	NOV, CO, ACO or ACPO. Contact permittee and require documentation of good or valid cause
	Missed interim date	Will result in other missed interim dates.	Phone call, NOV, CO, ACO, ACPO or judicial action

ODAFF AgPDES  
Enforcement Management System  
Chapter 5: Enforcement Evaluation  
September 7, 2012

		No good or valid cause	
		Will result in missed final date with no good or valid cause	NOV, CO, ACO, ACPO or judicial action
	Missed final date	Violation due to <i>force majeure</i> (strike, Act of God, etc.)	Contact permittee and require documentation of good or valid cause and date or schedule for compliance
		90 days or more outstanding with no good or valid cause	ACPO or judicial action
	Failure to make timely corrective control	Late with good or valid cause	Phone call, NOV
		Continued violation with no good or valid cause	Phone call, NOV, CO, ACO, ACPO or judicial action
	Failure to undertake required control treatment activities	Isolated or infrequent	Phone call, warning letter, NOV, CO, ACO, ACPO or judicial action
		Frequent or continuous	NOV, CO, ACO or ACPO or judicial action
<b>COMPLIANCE ORDER</b>			
	Missed deadline	Contained in previously issued CO with good or valid cause	Phone call, NOV, CO or ACO. Require documentation of cause, if not provided by the permittee
		Contained in previously issued CO and with no good or valid cause	ACPO or judicial action
	Reporting false information	Any instance	Judicial action. Consider referral for criminal prosecution
<b>ADMINISTRATIVE COMPLIANCE ORDER INTERIM DEADLINES</b>			
	Exceeding interim	Isolated or infrequent	CO or ACO

ODAFF AgPDES  
Enforcement Management System  
Chapter 5: Enforcement Evaluation  
September 7, 2012

	limits contained in an ACPO	Frequent or continued violations within the control of the permittee or known environmental damage	CO, ACO, ACPO or judicial action. Consider referral for criminal prosecution.
	Exceeding final limits	Outside of permittee's control (upset or bypass)	Contact permittee and require proof of good or valid cause
		Infrequent or isolated minor violation	Phone call, NOV
		Infrequent or isolated major violations of a single effluent limit	NOV, CO, ACO, ACPO or judicial action
		Frequent violations of effluent limits	CO, ACO, ACPO or judicial action
	Failure to meet final whole effluent limits	Isolated or infrequent violations; no known harm	Phone call, NOV, CO, ACO
		Isolated or infrequent; known harm	CO, ACO or ACPO or judicial action
		Continuing violations with or without harm	NOV, CO, ACO, ACPO or judicial action
	Exceeding interim limits	Outside permittee's control (bypass or upset)	Contact permittee and require proof of good or valid cause
		No known harm	Phone call, NOV
		Known harm	CO, ACO, ACPO or judicial action
	Failure to meet interim whole effluent limits	Isolated or infrequent violation; no known harm	Phone call, NOV
		Isolated or infrequent violation; known harm	NOV, CO, ACO or ACPO or judicial action
		Continued violation; with or without harm	CO, ACO, ACPO or judicial action
	Discharge without a permit	Unintentional/one time without harm	NOV, CO, ACPO or judicial action
		Intentional one or more times with or without harm	CO, ACPO or judicial action. Consider referral for criminal prosecution
COMPLIANCE INSPECTION			

ODAFF AgPDES  
Enforcement Management System  
Chapter 5: Enforcement Evaluation  
September 7, 2012

	Minor violation of sampling or analytical procedure	Any instance	Phone call, NOV
	Major violation of sampling or analytical procedure	No evidence of intent	NOV, CO or ACPO
		Evidence of negligence or intent	ACPO, judicial action. Consider referral for criminal prosecution
	Violation of permit conditions other than numerical effluent, schedule or reporting violations (BMPs, O&M, unauthorized discharge or bypass, record detention or record availability)	No evidence of negligence or intent	Phone call, NOV, CO, ACO, ACPO or judicial action. Immediate correction required
		Evidence of negligence or intent	ACPO or judicial action. Consider referral for criminal prosecution
QUALITY ASSURANCE			
	Non submittal of DMR/QA data	Isolated or infrequent	Phone call, NOV
		Continued violation	Phone call, NOV, CO, ACO, ACPO or judicial action

\* ODAFF will develop specific ERGs for categories of discharges, as needed, and will consult with EPA in the development of any specific ERG as necessary.





**Mary Fallin**  
Governor

August 16, 2012

Al Armendariz  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
Fountain Place 12th Floor, Suite 1200  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Dear Mr. Armendariz:

The State of Oklahoma is pleased to submit the enclosed description of the Oklahoma Department of Agriculture, Food, and Forestry's (ODAFF) Oklahoma Agricultural Pollutant Discharge Elimination System (AgPDES) program and related documents. I request approval as provided under Clean Water Act (CWA) Section 402(b) [33 U.S.C. § 1342(b)] of the AgPDES program.

Pursuant to 40 C.F.R. Part 123, the enclosures include:

- the AgPDES Program Description that explains the processes the state will use to carry out the responsibilities pursuant to 40 C.F.R. § 123.22;
- a Memorandum of Agreement that defines how the AgPDES program will be administered by the ODAFF and reviewed by the U.S. Environmental Protection Agency, Region 6 (EPA) pursuant to 40 C.F.R. § 123.24;
- copies of all applicable portions of the Oklahoma Statutes (O.S.) and Oklahoma Administrative Code (OAC), including 2 O.S. § 2A-1 *et seq.* and OAC § 35:44-1-1 *et seq.* regarding AgPDES procedures, authorities, and incorporations by reference of the relevant C.F.R. provisions, as well as the Administrative Procedures Act, the Oklahoma Open Records Act, and other relevant statutes and rules;
- a statement from the General Counsel of the Oklahoma Department of Agriculture, Food, and Forestry certifying that Oklahoma's laws and rules provide adequate authority to implement a partial National Pollutant Discharge Elimination System Program pursuant to 40 C.F.R. § 123.23.

The State of Oklahoma is confident that the enclosures provide sufficient documentation for EPA to determine that ODAFF possesses adequate authority to implement the proposed AgPDES program, in accordance with CWA Section 402(b) and 40 C.F.R. Part 123. I look forward to receiving EPA's timely approval and working with you to administer this very important Clean Water Act program.

Sincerely,

A handwritten signature in dark ink that reads "Mary Fallin". The signature is written in a cursive, flowing style.

Mary Fallin



**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE OKLAHOMA DEPARTMENT OF AGRICULTURE  
FOOD, AND FORESTRY  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REGION 6  
RELATING TO THE ADMINISTRATION AND  
ENFORCEMENT OF THE ODAFF'S AGRICULTURAL  
POLLUTANT DISCHARGE ELIMINATION SYSTEM  
PROGRAM**

## Table of Contents

	PAGE
SECTION I. GENERAL	4
SECTION II. SCOPE OF AUTHORIZATION	5
SECTION III. PROGRAM RESPONSIBILITIES	6
A. ODAFF RESPONSIBILITIES	6
B. EPA RESPONSIBILITIES	9
C. TRANSFER OF NPDES AUTHORITY	10
SECTION IV. PERMIT PROCESSING, REVIEW, AND ISSUANCE	12
A. TRANSFER OF FILES FROM EPA TO ODAFF	12
B. TRANSFERRED EPA ISSUED NPDES PERMIT	12
C. ODAFF PERMIT APPLICATION REVIEW AND PERMIT DEVELOPMENT	13
D. EPA REVIEW OF DRAFT AND PROPOSED PERMITS, PERMIT MODIFICATIONS, REVOCATIONS AND REISSUANCES	16
E. REQUEST TO REVIEW NOI BY EPA	20
F. WAIVER OF PERMIT REVIEW BY EPA	20
G. PUBLIC PARTICIPATION	21
H. OTHER FEDERAL, STATE AND TRIBAL NOTICE	22
I. ISSUANCE OF PERMITS OR NOTICE TO DENY	22
J. TERMINATION, MODIFICATION, REVOCATION AND REISSUANCE	22
K. ADMINISTRATIVE OR JUDICIAL ACTION	23
L. MAJOR DISCHARGER LIST	23
M. VARIANCES	23
SECTION V. COMPLIANCE MONITORING	24
A. COMPLIANCE TRACKING	24
B. COMPLIANCE REVIEW	25
C. FACILITY COMPLIANCE INSPECTIONS	25

SECTION VI.	ENFORCEMENT	27
A.	GENERAL	27
B.	TIMELY ENFORCEMENT RESPONSIBILITY	28
C.	ENFORCEMENT PROCEDURES	28
D.	TRANSFER OF ENFORCEMENT AUTHORITY	29
E.	EPA'S OVERSIGHT AND ENFORCEMENT AUTHORITY	29
F.	PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS	29
SECTION VII.	PROGRAM REVIEW AND REVISION	30
A.	EPA REVIEW OF AGPDES PROGRAM	30
SECTION VIII.	INDEPENDENT POWERS AND RIGHTS	33
SECTION IX.	INCORPORATION BY REFERENCE	33
SECTION X.	COMPUTATION OF TIME	33
SECTION XI.	MODIFICATION OF THIS MOA	34
SECTION XII.	MOA EFFECTIVE DATE	34

# MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6 (EPA), AND THE OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY (ODAFF) RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF THE ODAFF'S AGRICULTURAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (AgPDES) PROGRAMS

## **SECTION I. GENERAL**

Federal regulations found at 40 C.F.R. §§ 123.21(a) and 123.24 require any state which seeks to administer the National Pollutant Discharge Elimination System (NPDES) program to execute a Memorandum of Agreement setting forth the manner in which state assumption of Clean Water Act (CWA) Sections 301, 302, 306, 307, 402, 403, and 405 authority is to be undertaken. This document is the required Memorandum of Agreement (MOA). This MOA establishes policies, responsibilities and procedures under which the United States Environmental Protection Agency (EPA) will authorize and oversee, and the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) will administer a partial NPDES program pursuant to CWA Section 402 (33 U.S.C. § 1342) and 40 C.F.R. Part 123. ODAFF's partial program will be referred to as the Agricultural Pollutant Discharge Elimination System program or AgPDES. Section 402(n) of the CWA defines the circumstances under which EPA may approve a partial NPDES program submitted by a State.

The establishment and implementation of ODAFF's AgPDES program is in accordance with Section 402 of the Clean Water Act (hereinafter "CWA") and implementing federal regulations, the Oklahoma Agriculture Pollutant Discharge Elimination System Act (2 O.S. §§ 2A-1 *et seq.*), the Oklahoma Agriculture Environmental Permitting Act (2 O.S. §§ 2A-21 *et seq.*), and Oklahoma Administrative Code §§ 35:44-1-1 *et seq.*

The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by the Department are discharges associated with concentrated animal feeding operations ("CAFO"), discharges from the application of biological pesticides or chemical pesticides that leave a residue, discharges resulting from silviculture activities, and discharges of storm water from agricultural activities.

The COMMISSIONER and the REGIONAL ADMINISTRATOR hereby agree that this MOA applies to permits issued by ODAFF pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act (2 O.S. §§ 2A-1 *et seq.*), the Oklahoma Agriculture Environmental Permitting Act (2 O.S. §§ 2A-21 *et seq.*), and Oklahoma Administrative Code §§ 35:44-1-1 *et seq.* for discharges of pollutants to navigable waters of the United States, as defined in the CWA, that are within the scope of the program authorization set forth in Section II. of this MOA.

The COMMISSIONER and the REGIONAL ADMINISTRATOR hereby agree to maintain a high level of cooperation and coordination between ODAFF and EPA in a partnership to assure successful and effective administration of the AgPDES program.

ODAFF shall administer the AgPDES program in accordance with the CWA, federal and state statutory and regulatory requirements implementing the CWA, this MOA and any separate AgPDES related agreements and work plans entered into between ODAFF and EPA. ODAFF has primary responsibility for establishing AgPDES program strategies and priorities consistent with national NPDES program goals and objectives. Strategies and priorities for issuance, compliance monitoring and enforcement of AgPDES permits shall be consistent with this MOA and any other AgPDES related agreements entered into between ODAFF and EPA. However, pursuant to 40 C.F.R. § 123.24(c), the requirements of this MOA shall override any other AgPDES related agreements entered into between ODAFF and EPA.

Other guidance documents relevant to the AgPDES program include, but are not limited to:

- The National Guidance for the Oversight of the NPDES Program, EPA 1986; and
- Enforcement Management System (EMS) for NPDES Program, EPA 1989.

## **SECTION II. SCOPE OF AUTHORIZATION**

The COMMISSIONER and the REGIONAL ADMINISTRATOR agree that EPA has authorized ODAFF to administer a major category partial NPDES program under Section 402(n)(3) of the CWA for all discharges within ODAFF's regulatory jurisdiction.

The Department's program is a complete permit program for all discharges under the Department's jurisdiction and represents a significant and identifiable part of the state program required by § 402(b) of the CWA. The AgPDES program administered by the Department covers all discharges except for those beyond the Department's statutory authority or territorial jurisdiction. The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by the Department are discharges from concentrated animal feeding operations ("CAFO"), discharges of storm water from agricultural activities, discharges from the application of biological pesticides or chemical pesticides that leave a residue and discharges resulting from silviculture activities related to tree growing, planting management, log transport and log storage, and other activities, except those related to wood preservation and processing regulated pursuant to 40 C.F.R. Part 429 (Timer Products Processing) and Part 436 (Mineral Mining and Processing), which are regulated by the Oklahoma Department of Environmental Quality

The Department has the necessary jurisdiction to regulate all activities from all agriculture point sources subject to the AgPDES program, including CAFO, pesticide, and storm water activities, pursuant to 27A O.S. § 1-3-101(D). Generally, 2 O.S. § 2A-6(A) prohibits any discharge of pollutants into or adjacent to waters of the state except in accordance with a permit issued by the Director of the AgPDES. The Department has jurisdiction over all matters affecting agriculture that have not been expressly delegated

to another state or federal agency, as set out in the Oklahoma Agriculture Code, and is responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of environmental responsibility. The Oklahoma Environmental Quality Act, at 27A O.S. § 1-3-101(D)(1)(a), (b), and (c), specifically gives the Department environmental jurisdiction over point sources discharges from agricultural crop production and agricultural services. It also gives the Department environmental jurisdiction specific to the application of pesticides and facilities storing agricultural chemicals. The Department has the necessary jurisdiction to regulate discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal and industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to ODEQ. EPA retains jurisdiction over discharges not under the jurisdictional responsibility of either ODAFF or ODEQ.

ODAFF has authority to issue both individual and general permits pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act (2 O.S. §§ 2A-1 *et seq.*), the Oklahoma Agriculture Environmental Permitting Act (2 O.S. §§ 2A-21 *et seq.*), and as further identified in the Statement of Legal Authority for the Oklahoma Department of Agriculture, Food, and Forestry's National Pollutant Discharge Elimination System program issued by the General Counsel for the ODAFF pursuant to 40 C.F.R. § 123.23 (Attorney General's Statement).

### **SECTION III. PROGRAM RESPONSIBILITIES**

Upon program authorization by the Regional Administrator, ODAFF shall have sole responsibility for the issuance of all NPDES permits under the AgPDES program for discharges under the jurisdiction of ODAFF.

#### **A. ODAFF RESPONSIBILITIES**

In accordance with the priorities and procedures established in this MOA, ODAFF shall:

1. Develop, maintain, and exercise the legal authority and the resources required to carry out all aspects of the AgPDES program, including the legal authority to carry out all of the requirements for permitting (40 C.F.R. § 123.25), compliance evaluation (40 C.F.R. § 123.26), and enforcement authority (40 C.F.R. § 123.27) as described in detail in the Statement of Legal Authority (Attorney General's Statement).
2. Develop and maintain the resources necessary to carry out the responsibilities specified in this MOA and as prescribed by federal and state law.
3. Process permit applications and issue, reissue, modify, deny or revoke and reissue all AgPDES permits subject to ODAFF jurisdiction.
4. Initiate procedures to amend, revoke, suspend, renew, or terminate any permits upon the request of EPA. ODAFF will process the request in accordance with applicable

state laws or may require the permittee to submit an updated application if further information is requested before proceeding.

5. Ensure that the conditions of the draft permit comply with the applicable water quality standards of all affected states and tribes as prescribed by 40 C.F.R. § 122.44(d)(4), and provide timely notice of such draft permit and any other information requested by that state or tribe as required by 40 C.F.R. § 124.10(c).
6. Comprehensively evaluate and assess compliance with schedules, effluent limitations, and other permit conditions, as outlined in Section V. of this MOA.
7. Develop and maintain a Continuing Planning Process document per CWA 303(e) and 40 CFR §130.5.
8. Maintain a vigorous enforcement program by taking timely and appropriate enforcement actions in accordance with the CWA, national and regional Guidance, and applicable state law as outlined in Section VI. of this MOA and the AgPDES Enforcement Management System (EMS), with any modifications thereto.
9. Input nationally required data elements for all AgPDES permitted facilities into EPA's national permit/compliance/enforcement tracking system, currently Integrated Compliance Information System–National Pollutant Discharge Elimination System (ICIS-NPDES) database, in accordance with the schedule for transfer of such data set out in Section IV. A. This includes required data elements and data for non-major dischargers covered by an individual or general permit.
10. Make available to the public with no restrictions all effluent data, permits and permit applications pertaining to the AgPDES program. Other AgPDES data will be made available to the public consistent with 40 C.F.R. § 122.7.
11. Make available to EPA any information obtained or used by ODAFF under the AgPDES program upon request and without restriction due to claims of confidentiality. ODAFF shall determine if information submitted by an applicant under a claim of confidentiality is confidential in accordance with state law and identify the material accordingly. ODAFF shall notify EPA of any confidential information that is transmitted to EPA. EPA shall treat such information as confidential in accordance with 40 C.F.R. Part 2, Subpart B and 40 C.F.R. § 122.7.
12. Implement a public participation process that provides, supports, and encourages public participation as outlined in Section IV. G.
13. Consistent with 40 C.F.R. § 124.10 and after providing EPA the opportunity to review and comment on the draft permit package, provide public notice of a draft general permit for public comments, on the ODAFF website as well as publishing the notice in the form of a legal notice in two major newspapers, one in Oklahoma City and one in Tulsa. The draft general permit and fact sheet shall also be posted on ODAFF's website for a minimum of thirty (30) days.

14. Maintain adequate public files for each permittee at the ODAFF office located at 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, which are easily accessible to EPA and the public for program evaluation. Such files must include, at a minimum, copies of, or access to electronic copies of:

- a. Permit applications including attachments;
- b. Public notices;
- c. Fact sheets or statements of basis on the draft permits;
- d. Draft and issued permits;
- e. Studies supporting permit decisions (e.g., mixing zone, waste load allocation, total maximum daily load, site specific analysis or in stream sampling data, and water quality standards);
- f. Comments received on draft permits;
- g. Responses to comments received on draft permits;
- h. Comments received on proposed final permits;
- i. Proposed final permits;
- j. Final (issued) permits or final orders of denial;
- k. Fact sheet or statement of basis reflecting the final (issued) permit;
- l. Discharge Monitoring Reports;
- m. Annual reports from permittees, if required;
- n. Compliance schedule reports;
- o. All compliance and noncompliance reports;
- p. Copy of the Violation Summary Logs for the particular facility and actions;
- q. Changes to compliance schedule reports;
- r. Construction reports;
- s. All inspection reports;
- t. All enforcement actions;
- u. Notices of Intent (NOIs) or authorizations to discharge under general permits, including attachments (e.g., Nutrient Management Plans);
- v. Storm water related documents received by ODAFF, including pollution prevention plans for storm water discharges from construction sites associated with agriculture activities, etc.;
- w. Requests for hearings, motions for reconsideration and rehearing, and any order granted by ODAFF;
- x. Any Nutrient Management Plan (NMP) submitted with an NOI or permit application and any revisions to an NMP; and
- y. Notice of Termination (NOT).

15. Ensure that EPA is kept fully informed and updated regarding any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, including the following, as well as any other information that EPA requests:

- a. Draft and final policy and program development documents related to the AgPDES program;



- b. Draft and final statutes and rules related to the AgPDES program;
  - c. State Technical Standard that meets the requirements of 40 C.F.R. § 123.26;
  - d. New case law, settlement agreements, and administrative or judicial opinions regarding the rules related to the AgPDES program or that impact ODAFF's ability to implement the AgPDES program in accordance with federal requirements; and
  - e. Draft and final technical guidelines and policies that pertain to the AgPDES program.
16. Ensure, pursuant to 40 C.F.R. § 123.62, that any proposed revisions of the ODAFF AgPDES program or to the State's legal authority conform to the requirements of 40 C.F.R. § 123.62 and that those revisions are submitted to EPA for approval. In accordance with 40 C.F.R. § 123.62(e), new applicable federal NPDES regulations shall be incorporated into state regulations within one year of federal promulgation or within two years if a state statute must first be enacted.
17. Submit to EPA the information described in Section VII. of this MOA, the annual State Section 106 Program Plan, if ODAFF receives 106 grant funds from EPA to support the AgPDES Program, the Performance Partnership Agreement and applicable portions of 40 C.F.R. Part 123. Additionally, upon EPA request, ODAFF shall submit specific information and allow access to files as necessary for evaluating ODAFF administration of the AgPDES program.

#### B. EPA RESPONSIBILITIES

In accordance with the priorities and procedures established in this MOA, EPA shall:

- 1. Transfer all existing NPDES permits applicable to the AgPDES program for administration in accordance with the provisions set forth in this MOA and by 40 C.F.R. §§ 123.41 and 123.42.
- 2. Provide funding to ODAFF to support AgPDES program activities to the maximum extent possible under applicable law and existing budget requirements and priorities. It is recognized that it is the state's responsibility after program approval to run and manage the AgPDES program with or without the assistance of Federal funding.
- 3. Oversee the ODAFF administration of the AgPDES program on an ongoing basis for consistency with the CWA, this MOA, the 106 Program Plan or the Performance Partnership Agreement, and all applicable federal regulations, guidelines and policies.
- 4. At ODAFF's request, provide training, technical support, and assistance in the following areas as appropriate and as resources and funding allow:
  - a. Interpretation of NPDES and Effluent Limitation Guidelines (ELGs) regulations;
  - b. Development of technology based effluent requirements and related "best management practices," including those based upon the use of "best

- professional judgment;"
  - c. Development of water quality based effluent limitations to meet state water quality standards.
  - d. General technical assistance in processing permit applications;
  - e. Use of the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES;
  - f. Use of EPA utilized Enforcement Economic models (including BEN and ABEL);
  - g. Training for permit writers and administrative and technical staffs;
  - h. Inspection program; and
  - i. Compliance and enforcement.
5. Ensure that ODAFF is kept fully informed and up to date to the extent allowed by law and subject to confidentiality considerations at EPA's discretion concerning:
- a. EPA contractor reports, draft and final EPA development documents, and draft, proposed and final ELG regulations for various industry categories;
  - b. Final settlement agreements between EPA and litigants which concern the interpretation or modification of ELG regulations for various industry categories;
  - c. Draft, proposed, and final versions of EPA regulations, technical guidance, policy and procedures which pertain to the implementation of the AgPDES program (i.e., NPDES national goals, permit development, compliance and enforcement for CAFOs, pesticides, storm water, and silviculture); and
  - d. Copies of administrative orders, settlement agreements and court decisions pertaining to NPDES, CAFO, pesticides, storm water and any other implementing regulations pertinent to the AgPDES Program in Oklahoma.
6. Provide ODAFF with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep ODAFF informed, to the extent allowed by law and subject to confidentiality considerations at EPA's discretion, of the development of national NPDES program policy statements, strategies, performance measures and related guidance and will seek input from ODAFF, when appropriate.
7. Input all required data into EPA's national permit/compliance/enforcement tracking system, currently ICIS-NPDES, for the facilities EPA retains permanent authority over.

### C. TRANSFER OF NPDES AUTHORITY

Upon program authorization, ODAFF shall assume administration of AgPDES related NPDES permits issued prior to program authorization, including all the functions of permitting, compliance monitoring, and receipt of self monitoring reports and enforcement, in accordance with this MOA and the schedule for transfer of NPDES permit administration set out in Section IV. A. EPA administration of permits after the

date of program authorization is detailed below.

ODAFF and EPA will exchange permit and program information consistent with the procedures described by 40 C.F.R. §§ 123.41, 123.42 and 123.43. Upon authorization, and in accordance with the transfer schedule in Section IV. A., ODAFF shall:

1. Assume NPDES permitting, compliance monitoring and enforcement authority for all facilities within its regulatory jurisdiction in accordance with the transfer schedule in Section IV. A. of this MOA.
2. Receive and review Discharge Monitoring Reports (DMRs), if applicable, and conduct inspections as appropriate for all permits pursuant to the transfer schedule in Section IV.
3. Retain the right to enforce more stringent state law, in addition to federal law, at facilities with EPA issued NPDES permits that transfer to ODAFF jurisdiction after program authorization.

Upon program authorization, EPA will cease to issue NPDES permits that are under ODAFF's AgPDES jurisdiction. Permits transferred to ODAFF after any of the following activities shall be transferred in accordance with procedures described in Section IV. EPA will retain responsibility for administering and enforcing permits as follows:

1. Permits out for public notice under the NPDES program, and permits for which EPA has substantially completed the permitting process or concluded a public review period until such time that EPA completes its permit issuance related activities. Upon program approval, EPA will provide a list of these permits to ODAFF. Once EPA has completed its actions, relevant permit files will be transferred, and ODAFF will assume administration. ODAFF is responsible for completing all actions to final issuance of these permits and will prepare proposed final permits or utilize EPA prepared proposed final permits.
2. Permits for which variances or modifications have been requested or permits on appeal at the time of program authorization until such time as the matter is resolved. EPA will make every effort to resolve these requests as quickly as possible. Upon resolution of the variance or modification request or an administrative or judicial challenge, EPA shall notify ODAFF and then transfer permit administration responsibilities and relevant permit files to ODAFF. ODAFF is responsible for modification or reissuance of the permits as needed.
3. Permits over which there are pending or ongoing EPA enforcement actions. EPA shall retain jurisdiction over these permits until final resolution of the enforcement actions by: 1) the permittee's compliance with the requirements of a compliance order, consent agreement or court order resulting from the EPA enforcement action; 2) withdrawal of the action by EPA; 3) a court decision dismissing the action; or 4)

the imposition of an equivalent state enforcement action by ODAFF upon agreement by the EPA. EPA shall make every effort to resolve these enforcement matters as quickly as possible. As each EPA enforcement action is resolved, EPA shall notify ODAFF and transfer relevant permit files and administration of the permits.

4. Permits where workload and resource constraints prompt EPA and ODAFF to agree that EPA will develop and process the permits. Although EPA may propose draft permits, all such permits under ODAFF authority shall be finally issued by ODAFF. All official permit records shall subsequently be transferred from EPA to ODAFF.
5. Permits for discharges to federally recognized Indian Country remain under EPA NPDES jurisdiction.
6. Permits for facilities under the jurisdiction of the Oklahoma Corporation Commission remain under EPA NPDES jurisdiction.

#### **SECTION IV. PERMIT PROCESSING, REVIEW, AND ISSUANCE**

Upon AgPDES program authorization, ODAFF is responsible for drafting, providing public notice for, issuing, reissuing, modifying, denying, revoking and reissuing, and terminating AgPDES permits in accordance with this MOA, the CWA and its implementing regulations, and applicable state statutes and rules.

##### **A. TRANSFER OF FILES FROM EPA TO ODAFF**

Within thirty (30) days of authorization of the ODAFF AgPDES program by the Regional Administrator, EPA shall deliver all relevant permit files requested by ODAFF. EPA will utilize available in house information to ensure all files are complete prior to delivery to ODAFF.

Permit files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all DMRs, all compliance reports, all enforcement actions and all other pertinent information and correspondence. Relevant information shall include but is not limited to application forms, correspondence, draft permits, public notices, fact sheets, and statements of basis.

The Commissioner will notify the Regional Administrator if any file received from EPA for a transferred EPA issued permit is incomplete and include a list of missing materials. Within sixty (60) days of such notification, EPA shall provide a copy of the missing materials to ODAFF unless, after diligent effort, the information cannot be located. At that point EPA will notify ODAFF that the information is not available.

In case of a required compliance or enforcement action arising within thirty (30) days of program approval, EPA will expedite transfer of applicable permit files at ODAFF's request.

## B. TRANSFERRED EPA ISSUED NPDES PERMITS

1. Permitting and enforcement authority for any federally issued NPDES permits, whether individual or general, within the jurisdiction of ODAFF's AgPDES program and in effect at the time EPA authorizes the AgPDES program, transfers to ODAFF upon authorization except as specified in Section III.C. The transferred permit serves as an AgPDES permit and its terms and conditions continue in effect until permit expiration unless modified or revoked and reissued by ODAFF.
2. An administratively extended EPA issued permit becomes an AgPDES administratively extended permit at the time of program authorization. Until ODAFF reissues it, an administratively extended permit remains in effect and enforceable.
3. Within thirty (30) days of EPA transferring a current or administratively extended permit, ODAFF shall:
  - a. Notify the permittees, with a copy to EPA, that the authority to administer the permit was transferred to ODAFF and that the EPA issued NPDES permit shall serve as an AgPDES permit and remain in effect until the natural expiration of the permit, unless revoked and reissued by ODAFF.
  - b. Send the permittees updated contact information for reporting requirements under the permit.
  - c. Provide a new cover page to the permit including: the name of the permit, the date that the permit authority is transferred from EPA to ODAFF, permit effective date, ODAFF contact information, and the new permit number, if different.
4. If timely application for reissuance of a transferred EPA issued permit is submitted, ODAFF shall take action on that application prior to its expiration.
5. ODAFF will reissue or replace transferred general permits prior to expiration or as soon as practicable if already expired. An EPA issued general permit assumed by ODAFF will continue until the effective date of an ODAFF issued AgPDES permit to replace it or until ODAFF otherwise terminates the EPA issued permit.
6. An ODAFF issued AgPDES permit for a facility replaces its EPA issued NPDES permit.

## C. ODAFF PERMIT APPLICATION REVIEW AND PERMIT DEVELOPMENT

For purposes of the AgPDES program and this MOA, "draft permit" means a draft document prepared by ODAFF following a determination that a Tier II or Tier III permit application is administratively and technically complete. The application is considered complete when the application form is properly filled out and supporting data are adequately presented with technical calculation or justification. This document is prepared for public notice and comment, indicating ODAFF's tentative decision to issue

or deny, modify, revoke and reissue, or terminate a permit following a formal public meeting if requested. "Proposed permit" means a document based on a Tier III draft permit and prepared by ODAFF after consideration of comments received on the draft permit indicating ODAFF's intention to issue a final Tier III permit pending the outcome of an administrative hearing, if any.

Under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, a "formal public meeting" is a public forum conducted by a presiding officer, at which an opportunity is provided for the presentation of oral and written comments. Pursuant to the Act, "Public meeting" shall mean a 'public hearing' when held pursuant to the requirements of the NPDES provisions in the Code of Federal Regulations or the Oklahoma Agriculture Pollutant Discharge Elimination System Act. A public meeting shall not be a quasi-judicial proceeding." 2 O.S. §§ 2A-1 *et seq.* A "public meeting" satisfies the requirements for a public hearing under 40 C.F.R. Part 124. The formal public meeting is distinguished from the process meeting as the process meeting is an initial informational meeting for the public regarding a Tier III application and does not replace the public hearing required by 40 C.F.R. Part 124.

Under the Oklahoma Agriculture Environmental Permitting Act, an "administrative hearing" on the permit is a quasi-judicial proceeding conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture.

## 1. Review of Applications

- a. ODAFF shall be responsible for the administrative and technical review of all wastewater and storm water discharge permit applications within ODAFF's AgPDES jurisdiction.
- b. During ODAFF staff administrative completeness determination and technical review of permit applications, ODAFF shall, when necessary, contact the applicant to request changes, revisions, corrections or supplemental submissions.
- c. ODAFF staff will inform applicants of their application status, after review is completed and the draft permit is ready for public notification.
- d. ODAFF will notify the applicant and the public if the Director of AgPDES decides to tentatively deny the application.
- e. ODAFF will ensure that the appropriate application information is coded into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES. New permit application information shall be input within fourteen (14) days after ODAFF's completeness determination.

## 2. Permit Development

Permits issued by ODAFF shall include requirements necessary to assure compliance with the Clean Water Act, Oklahoma Water Quality Standards, and any applicable state water quality standards implementation procedures. Permits must assure that discharges

are required to receive an appropriate level of treatment prior to discharging and that the designated uses for receiving streams are protected.

AgPDES permit applications will be designated as Tier I, Tier II or Tier III pursuant to the designation process established under the Oklahoma Agriculture Environmental Permitting Act and rules promulgated by the Board. Pursuant to 40 C.F.R. § 122.28(b)(2), incorporated by reference at OAC § 35:44-1-2(a)(2)(L), "[a] complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for purposes of §§ 122.6, 122.21 and 122.26." Although the Oklahoma Statutes and rules authorizing and implementing the AgPDES program refer to "applications for authorizations to discharge under general permits" instead of NOIs, for purposes of this MOA and the AgPDES program, the two terms are interchangeable. For the sake of clarity and consistency with the federal NPDES program, the term NOI is used throughout this document.

- a. Tier I includes applications for changes to individual discharge permits or changes to authorizations to discharge under general permits that would constitute "minor modifications" under 40 C.F.R. § 122.63 (incorporated by reference at OAC 35: 44-1-2). Tier I will also include new or renewed NOIs under general permits other than a CAFO general permit and applications for major modifications to an authorization to discharge under any general permit other than a CAFO general permit. It should be noted that changes to a Nutrient Management Plan (which is part of a CAFO permit) require a separate public notice and participation process under 40 C.F.R. § 122.42(e)(6)(ii) (incorporated by reference at OAC 35: 44-1-2). Once a Tier I application has been declared complete, the assigned technical supervisor or a local representative, if authorized by ODAFF, will either issue the requested authorization or deny the application.
- b. Tier II includes applications for authorization to discharge under a CAFO general permit and applications for major modification of an authorization to discharge under a CAFO general permit. All new general permits as well as applications to modify or renew existing general permits will also be subject to the requirements for Tier II applications. In addition, Tier II will cover applications for new individual discharge permits for small and medium CAFOs and all "non-major" facilities other than CAFOs. Tier II will also cover applications for renewal of or major modification to all individual discharge permits, including individual CAFO permits. Upon filing a Tier II application with ODAFF, the applicant shall publish notice of the filing as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. "Local to the proposed new site or existing facility" is interpreted by the Department to be analogous to and as broadly construed as the federal standard of "area affected by the facility or activity" as specified in 40 C.F.R. 124.10(c)(2)(i). Once a Tier II application has been declared administratively and technically complete, ODAFF staff will prepare a fact sheet and a draft permit or draft denial of permit. Notice of a draft permit will

be given by the applicant and notice of a draft denial will be given by ODAFF. The notice shall identify public locations where the draft denial or draft permit may be viewed, including a public location in the county where the proposed new site or existing facility is located, and shall provide a set time period of at least thirty (30) calendar days after publication of public notice for public comment and an opportunity to request a public meeting on the draft denial or draft permit. If no comment or public meeting request on a Tier II permit is received in the time period allowed (thirty (30) days starting on the date of public notice) and no public meeting is held, ODAFF shall issue or deny the final permit.

For Tier II draft permits or draft denials for which comments or a request for public meeting are received in the time period allowed (thirty (30) days starting on the date of public notice) or for which a public meeting is held, ODAFF shall consider all comments, prepare a response to comments document, and issue or deny the final permit accordingly.

Applications for coverage under a CAFO general permit, which are Tier II applications, require submittal of a Nutrient Management Plan (NMP) in addition to an NOI. In accordance with the Second Circuit Court of Appeal's decision in Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2d Cir. 2005) and EPA's permitting requirements for CAFOs set out at 40 C.F.R. § 122.23, ODAFF will review NOIs submitted by CAFO owners or operators to ensure that the NOI includes the information required by 40 C.F.R. § 122.21(i)(1), including an NMP that meets the requirements of § 122.42(e) and applicable effluent limitations and standards. ODAFF has incorporated 40 C.F.R. §§ 122.23, 122.21(i)(1) and 122.42(e) by reference. Once ODAFF makes a preliminary determination that the NOI meets the applicable requirements, ODAFF will make available for review and public comment the NOI, including the NMP, and the draft terms of the NMP to be incorporated into the permit. The public notice, opportunity for public comment, opportunity to request a formal public meeting and any public meeting if held, will follow the same procedures and requirements applicable to other Tier II draft permits as discussed above.

- c. Tier III shall include applications for new individual discharge permits for large CAFOs and "major" non-CAFO facilities, as well as any other applications for new individual discharge permits not covered by Tier II. Issuance or denial of Tier III permits shall follow the same process used for Tier II permits, except that the process for Tier III permits shall include additional opportunity for public participation. The notice of filing of a Tier III application by the applicant shall include an opportunity to request a "process meeting," which is defined under the Oklahoma Agriculture Environmental Permitting Act as "a meeting open to the public which is held by the Department to explain the permit process and the public participation opportunities applicable to a specific Tier III application." In addition,



following the public comment period and public meeting, if any, on a Tier III draft permit or draft denial, ODAFF shall either issue a final denial of the permit or prepare a proposed permit. If a proposed permit is prepared, the applicant shall publish notice of ODAFF's tentative decision to issue the proposed permit and shall provide a twenty (20) working day opportunity to request an administrative hearing on the proposed permit.

#### D. EPA REVIEW OF DRAFT AND PROPOSED PERMITS, PERMIT MODIFICATIONS, REVOCATIONS AND REISSUANCES

ODAFF may consult with EPA while drafting a permit to ensure that the draft will comply with federal guidelines and requirements. If ODAFF chooses to consult, ODAFF shall transmit to EPA appropriate portions of working documents as appropriate for review. At the time of transmittal, EPA and ODAFF will agree to a timeline to complete any review.

Unless waived pursuant to Section IV. F. of this MOA, and as authorized by 40 C.F.R. § 123.24(d) and 40 C.F.R. § 123.44(j), EPA shall receive from ODAFF draft permits, permit modifications, revocations, and reissuances.

1. Prior to issuance of public notice of a permit action, ODAFF will provide EPA one copy of the complete draft permit package, which shall include the public notice, the application, the draft permit, the fact sheet or statement of basis, and any permit rationale for the draft permit as well as any corresponding supporting data. If the draft permit package is for a CAFO individual permit, ODAFF will include the permittee's nutrient management plan.
2. Upon receipt of the complete draft permit package, EPA review and its comments, objections and recommendations shall be performed in accordance with 40 C.F.R. § 123.44. Reviews will not be performed on incomplete packages. EPA will notify ODAFF of an incomplete package and request additional information. Comments or objections submitted to ODAFF shall include a statement of the reason for comment or objection and the supporting section of the CWA, regulation, or policy. ODAFF will not proceed with issuance of a permit if there are unresolved EPA objections to the permit.
3. EPA objection to issuance of a draft permit must be based upon one or more of the conditions found at 40 C.F.R. § 123.44(c). ÷
  - a. For Individual Permits:
    - i. Within the initial thirty (30) days after receipt of the complete draft permit package:
      - EPA may make a general objection by providing written notice to ODAFF. The notice shall set forth in writing the

general nature of the objection in accordance with 40 C.F.R. § 123.44(b)(1).

- EPA may make an interim objection to issuance of the permit if insufficient information is included in the draft permit package to determine if the permit complies with the Clean Water Act. If EPA makes such an interim objection, EPA shall have the full period of time allowed under this MOA, thirty (30) days for a general objection and ninety (90) days for a specific objection, after receipt of the additional information from ODAFF to provide comments, recommendations or objection.
  - EPA may request additional time up to sixty (60) days beyond the initial 30 day review period to review the draft permit package. Upon request, EPA will have an additional sixty (60) days beyond the initial 30 day review period in which to provide comments and/or objections.
- ii. If EPA has not provided ODAFF with a general or interim objection or requested additional time to review the draft permit package within thirty (30) days of receipt of the complete draft permit package, ODAFF may proceed with issuance of the public notice. If EPA does not provide ODAFF with comments and/or objections within ninety (90) days of EPA's receipt of the permit package, ODAFF may assume EPA has no objection to the issuance of the permit and may proceed with public notice of the permit.
- iii. If, following its general objection, EPA continues to object to ODAFF's issuance of the permit, EPA must provide ODAFF with a specific objection within ninety (90) days from EPA's receipt of the draft permit package, in accordance with 40 C.F.R. § 123.44. A specific objection must include the reason and support for objection and must include EPA's recommendation of the specific actions required for ODAFF to eliminate the objection.
- iv. EPA and ODAFF may mutually agree to extend EPA's review time to the full ninety (90) days without filing a general objection within the first thirty (30) days.

b. For General Permits

- i. In the case of general permits, EPA shall have ninety (90) days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the draft general permit. If EPA has not provided ODAFF comments and/or objections within ninety (90) days of receipt of the complete draft general permit package, ODAFF may assume EPA has no objection to the issuance of

the permit and may proceed with issuance of the public notice.

- ii. EPA may make an interim objection to issuance of the permit if insufficient information is included in the draft general permit package to determine if the permit complies with the Clean Water Act. If EPA makes such an interim objection, EPA shall have the full ninety (90) day review period provided by this MOA after receipt of the additional information from ODAFF to provide comments, recommendations or objection.
4. Within ninety (90) days of receipt by the State of an objection by EPA, the State or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 C.F.R. § 123.44(e) and (f). If the hearing is requested by the State, EPA must hold the hearing. Following any public hearing, EPA must reaffirm the original objection, modify the terms of the objection, or withdraw the objection and must notify the State of its decision.
5. If the State does not submit a revised permit that meets EPA's objections within ninety (90) days of the notice of objection (or thirty (30) days following reaffirmation of the original objection or modification of the objection following a public hearing on the objection), EPA may issue the permit. Following the issuance of an EPA issued permit, authority to reissue the permit reverts to the State.
6. If EPA knows that no comments and/or objections will be submitted on a specific permit, EPA will notify ODAFF of that fact.
7. When cause exists and consistent with 40 C.F.R. § 122.62, EPA may request a modification to an individual permit or to an authorization for coverage under a general permit or an NMP submitted along with an NOI for coverage under a CAFO general permit by making an official request in writing to ODAFF stating the reasons for such modification or change. ODAFF will initiate procedures to comply with such a request within thirty (30) days after receiving the request.
8. At EPA's request, ODAFF shall supply EPA with copies of the documents described above for permits for which EPA has waived review.
9. ODAFF shall proceed with permit issuance if 1) EPA has not submitted comments, objections or recommendations in writing within the time frames set out in paragraph 3 of this section; and 2) ODAFF received no significant public comments on the draft permit during the public review period.
10. Once the public comment period on a draft permit is complete, ODAFF shall prepare its response to comments and make any necessary changes to the permit and fact sheet. ODAFF may issue the permit without further review by EPA unless:
  - a. A proposed permit is prepared in the case of a Tier III application and

the proposed permit differs from the draft permit previously reviewed by EPA. If the proposed permit differs from the draft permit reviewed by EPA, ODAFF will forward the permit to EPA for review prior to publishing the proposed permit for comment.

- b. The permit to be issued differs from the draft permit reviewed by EPA, unless the changes are insignificant and EPA agrees that additional review is not needed;
  - c. EPA objected to the draft or proposed (in the case of Tier III applications) permit;
  - c. There were significant comments on the draft or proposed (in the case of Tier III applications) permit; or
  - d. EPA requests in writing to review the permit to be issued.
11. If any of the conditions specified in the previous paragraph apply to the permit to be issued ODAFF shall send EPA one copy of the permit to be issued, copies of the written public comments received, including hearing records, and ODAFF's response to comments. EPA may comment upon, object to, or make recommendations to the permit to be issued pursuant to the procedures and timeframes discussed above and included in 40 C.F.R. § 123.44. ODAFF's process is consistent with 40 C.F.R. §§ 124.6 and 124.17.
12. Nothing in this MOA waives EPA's right to object to a proposed permit (in the case of Tier III applications) or a final permit to be issued, even if EPA did not object to the draft permit, consistent with the procedures described in 40 C.F.R. § 123.44.
13. If review of a proposed permit (in the case of Tier III applications) or a final permit to be issued is not triggered, ODAFF shall transmit an electronic copy of the final issued permit, fact sheet, and response to comments to EPA in accordance with 40 C.F.R. § 123.43(a)(3) no later than thirty (30) days after final issuance of a permit

#### E. REQUEST TO REVIEW NOI BY EPA

EPA may request to review any applicant's NOI to be covered under a general permit. Within five (5) days of EPA's written request, ODAFF shall provide to EPA a copy of the NOI along with a copy of the facility's NMP if the requested NOI is for coverage under a CAFO general permit. When requesting a CAFO's NOI, EPA may also request a copy of any draft terms of the NMP to be incorporated into the general permit for that CAFO. Within thirty (30) days after receipt of the NOI, and NMP if applicable, EPA shall notify ODAFF of any objection to the applicant's suitability for coverage under the general permit. EPA shall also notify ODAFF of any objection to the terms of the NMP to be incorporated into the CAFO general permit within thirty (30) days after receipt. If EPA concerns are not satisfactorily addressed, ODAFF shall not grant the applicant coverage under the general permit.

## F. WAIVER OF PERMIT REVIEW BY EPA

1. EPA waives the right to review, object to, or comment on the sufficiency of draft permits and proposed permits to the extent that they are necessary to submit to EPA, and final permits for all discharges or proposed discharges covered by this MOA, except for the following categories of permits:
  - a. Discharges proposed to be regulated by an individual permit;
  - b. Discharges proposed to be regulated by general permits (applicable only to general permits themselves, not to NOIs for coverage under general permits except as explained in Section E, above);
  - c. Discharges which may affect the waters of Indian Country in Oklahoma;
  - d. Discharges which may affect the waters of another state;
  - e. Discharges within any of the twenty one (21) industrial categories listed in Appendix A to Part 122;
  - f. Discharges with a daily average discharge exceeding 0.5 million gallons per day, except non-process wastewater;
  - g. Discharges that may affect endangered species; and
  - h. Discharges which are likely to adversely affect sites listed or eligible for listing in the National Register of Historic Places and cultural properties.
2. With respect to permit modifications, revocations, and reissuance, EPA waives the right to review any permit for which EPA has waived its right to review the original permit, unless the modification would put the permit into one of the categories above.
3. EPA reserves the right to terminate the waivers in this section, in whole or in part, at any time. EPA shall terminate any waiver in writing to ODAFF.
4. EPA does not waive its right to receive copies of all final permits or any notices required under Section VII. of this MOA, including those for which it has waived review. EPA also does not waive its right to petition ODAFF for review of any action or inaction. The foregoing waivers do not apply to permits that do not comply with applicable provisions of federal laws, federal regulations, federal effluent guidelines, Oklahoma statutes or Oklahoma rules.

## G. PUBLIC PARTICIPATION

The public notification provided in the permit process shall be consistent with state rules, with 40 C.F.R. Part 25 and §§ 124.8, 124.10 and 124.12 and with the CAFO specific public notice and hearing requirements found in 40 C.F.R. §§ 122.23(h) and 122.42(e)(6). All AgPDES permits will be publicly noticed in a manner constituting legal notice to the public under State law, in accordance with 40 C.F.R. § 124.10(c)(3).

1. ODAFF will make available to the public all permit applications, public notices, preliminary draft permits, draft permits, fact sheets, or statements of basis, proposed

permits, final permits, effluent data, inspection reports and other documents pertaining to the AgPDES program (except information determined to be confidential in accordance with 40 C.F.R. Part 2 or analogous State law). ODAFF shall provide copies of such information to any person upon request and upon payment of applicable state duplicating fees.

2. ODAFF will develop all fact sheets or statement of basis in accordance with state rules and federal regulations (40 C.F.R. § 124.7, § 124.8, and § 124.56). Public notices shall be developed and distributed in accordance with state rules and 40 C.F.R. § 124.10 in addition to any CAFO specific notice requirements found in 40 C.F.R. § 122.23(h) and 40 C.F.R. § 122.42(e)(6).
3. The public will be allowed at least thirty (30) days to comment on draft permits and will be notified via a public notice that a draft permit is available for review and comment. In instances where ODAFF determines that a public hearing is appropriate, public notice will be given at least thirty (30) days prior to the hearing,
4. ODAFF will develop an electronic mailing list by which information regarding AgPDES permitting activities will be distributed electronically to interested parties upon request. The list shall include U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the State Historic Preservation Office, Oklahoma Department of Environmental Quality, Oklahoma Department of Wildlife Conservation, agricultural related entities or trade organizations, environmental organizations, affected Indian tribes, affected states, and any other person who is interested in AgPDES activities. ODAFF shall provide copies of such information to any person upon request and upon payment of applicable state duplicating fees.
5. The public notice and comment procedures required by 40 C.F.R. § 122.62 and incorporated by reference by ODAFF will be followed with respect to all permit modifications to final issued permits. In the event the State initiates a minor permit modification, the State will transmit the final minor modification to EPA, the applicant, and all persons who received notice of the permit issuance. Public notice of major modifications will be given in the same manner as for initial permit applications.
6. If ODAFF determines that an NMP must be revised prior to granting coverage, applicants must submit a revised NMP to ODAFF for review and approval before the authorization can be issued.
7. ODAFF shall post final permits on its web page for a period of at least three months from the date of permit issuance. Within two weeks from the date of posting, ODAFF will notify persons who commented on the draft permit during the public review period, or who requested notification of ODAFF's final action, of such issuance.
8. ODAFF shall provide an opportunity for judicial review in state court of the final

approval or denial of a permit that is sufficient to provide for, encourage, and assist public participation in the permitting process in accordance with 40 C.F.R. § 123.30.

9. ODAFF shall hold public hearings in accordance with 40 C.F.R. § 124.12 and shall inform EPA via written correspondence of a scheduled public hearing within one week of scheduling the hearing.
10. ODAFF shall provide paper copies of notices, draft permits, reports, records etc. Per Oklahoma Open Records Act, public may request for these documents, except those considered as business confidential, in paper copies and pay a fee for such service, currently at \$0.25 per page.

#### H. OTHER FEDERAL, STATE AND TRIBAL NOTICE

ODAFF shall provide notice by emailing at the following stages in the permitting process to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the State Historic Preservation Office, Oklahoma Department of Environmental Quality, Oklahoma Department of Wildlife Conservation, affected Indian tribes, affected states, and any other person who has requested such notice, that the following documents are available on ODAFF's web page:

1. Notice of the draft permit availability on the ODAFF website.
2. Draft permit and fact sheet or statement of basis on the ODAFF website available for review and comment.
3. Proposed permit at the time it is transmitted to the applicant for its five day review period.
4. Final permit when issued.

#### I. ISSUANCE OF PERMITS OR NOTICE TO DENY

1. Issuance: If the final determination is to issue a final permit, the final permit shall be forwarded to the permit applicant, along with a transmittal letter to notify it him/her of ODAFF's decision. A copy of the final permit shall be transmitted to EPA in accordance with the schedule contained in Section IV.D. of this MOA.
2. Denial: If the final determination is to deny the permit application, ODAFF shall provide the applicant with a notice of intent to deny and shall provide a copy of the notice to EPA.

#### J. TERMINATION, MODIFICATION, REVOCATION AND REISSUANCE

1. ODAFF shall notify EPA whenever it intends to terminate, make a major modification to, revoke, or reissue an issued AgPDES permit.

2. ODAFF shall transmit to EPA a copy of any draft major modification to a permit or any revocation and subsequent reissuance. ODAFF shall clearly identify the proposed changes. The permit review and reissuance procedures in Section IV.D. shall apply to modifications of any reissued permit, for purposes of this MOA, except for permits that undergo minor modification.

#### K. ADMINISTRATIVE OR JUDICIAL ACTION

1. If an administrative or judicial order affects in any manner the terms of a permit, including any permit for which review has been waived by EPA, or impacts ODAFF's ability to implement the AgPDES program in accordance with federal regulations, ODAFF shall transmit within fifteen (15) days to EPA a copy of the order and any affected permit with any changes identified. The permit review and reissuance procedures in Section IV. D. shall apply to modifications under this section.
2. ODAFF shall notify EPA when it makes a determination to stay a permit in whole or in part.

#### L. MAJOR DISCHARGER LIST

There shall be included as a part of the annual program plan a "major discharger" list. Major dischargers shall include those dischargers mutually defined by ODAFF and EPA as major dischargers based on a point rating worksheet or any dischargers that in the opinion of ODAFF or EPA have a high potential to violate water quality standards, or have the potential to cause other significant environmental problems.

#### M. VARIANCES

Variances shall be processed in accordance with the requirements of 40 C.F.R. § 124.62, incorporated by reference at OAC § 35:44-1-2(a)(3)(P). For those variances requiring EPA Region 6 or Headquarters consultation and approval, ODAFF shall conduct an initial review, after which ODAFF shall contact EPA Region 6 to discuss the appropriate approval process and anticipated approval timeframe. Any variance granted or denied by ODAFF is subject to EPA objection under 40 C.F.R. § 123.44.

### **SECTION V. COMPLIANCE MONITORING**

ODAFF shall maintain a vigorous program to identify noncompliance and initiate timely, appropriate, and effective action to return the discharger to compliance. ODAFF shall operate a timely and effective compliance monitoring system whereby ODAFF enters required data to the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, in batch uploads at least every fourteen (14) days, or manually enters data within fourteen (14) days of receipt of the data or an event occurrence.



For purposes of this MOA, “compliance monitoring” refers to all efforts to ensure full compliance with AgPDES permit conditions and the AgPDES program requirements. Compliance monitoring shall include reviewing reports and files, responding to complaints, and conducting inspections and follow ups. ODAFF shall undertake all compliance monitoring activities in a manner that assures compliance with applicable laws, permit terms and conditions, and that will, if necessary, lead to timely, appropriate and effective formal enforcement.

#### A. COMPLIANCE TRACKING

1. In accordance with the AgPDES Program Description, this MOA, and as required in 40 C.F.R. § 123.26, ODAFF shall operate a compliance tracking system so ODAFF staff can determine whether:
  - a. The permittee submitted self monitoring reports required by a permit are received at ODAFF on time; for those reports required to be submitted at a frequency of less than thirty (30) days, a special follow up list will be established in order to track them separately;
  - b. The permittee submitted reports are accurate and complete; and
  - c. The permittee is in full compliance with all permit conditions.
2. ODAFF shall require permittees to use EPA approved Discharge Monitoring Report (DMR) formats for AgPDES facilities reporting monthly discharges.
3. ODAFF shall track the submittal of all reports for date related permit conditions or other reporting schedules as required by the permit or administrative or judicial orders electronically in EPA’s national permit/compliance/enforcement tracking system, currently ICIS-NPDES. ODAFF will also track report submittals using its own system.
4. ODAFF will enter the reported data into EPA’s national permit/compliance/enforcement tracking system, currently ICIS-NPDES, for all permittees within thirty (30) days of receipt of a permittee’s submittal; except those required to submit at a frequency of less than thirty (30) days.
5. ODAFF’s response to non-receipt or denial of any required submittal under this section shall be consistent with the time frames in the regulations and the EMS, such that failure to provide required submittals within thirty (30) days of the required date, or unacceptable submittals without subsequent acceptable revisions provided within thirty (30) days of the required date are instances of noncompliance.
6. ODAFF shall prepare and submit the Quarterly Non-Compliance Report (QNCR) within the required time frames as outlined in the NPDES regulations found at 40 C.F.R. § 123.45 and national guidance. ODAFF shall prepare the QNCR automatically by using any compliance data that is entered into the EPA national

permit/compliance/enforcement tracking system, currently ICIS-NPDES, at regularly scheduled intervals according to established procedures.

7. EPA and ODAFF shall verify the accuracy and completeness of both the QNCR and the data in the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, at periodic intervals.

## B. COMPLIANCE REVIEW

1. ODAFF shall conduct timely and substantive review of, and shall maintain complete records of, all written material relating to the compliance status of AgPDES facilities including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, annual reports, enforcement documents and any other reports that facilities may be required to submit under the terms and conditions of an AgPDES permit, state administrative actions or state court orders.
2. ODAFF shall conduct a timely and substantive review of all self monitoring reports received, date related permit conditions, and results of a site inspections, if conducted, to evaluate the permittee's compliance status. This evaluation shall be uniform and consistent and shall take into account the frequency, severity, circumstances and analytical error to determine the appropriate enforcement response to noncompliance.
3. ODAFF shall ensure that AgPDES permit limitations and permittee self monitoring compliance data are entered into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, within thirty (30) days of the date of permit issuance.

## C. FACILITY COMPLIANCE INSPECTIONS

For the purposes of this MOA, a "compliance inspection" may include compliance evaluation, compliance sampling, performance audit, records review, diagnostic, reconnaissance, and follow up for any discharge under ODAFF jurisdiction, whether permitted or unpermitted. The different types of compliance inspections are described in the AgPDES Program Description and shall be conducted in accordance with the EPA Publication No. EPA 305-X-04-001, dated 2004 and titled *NPDES Compliance Inspection Manual* or any subsequent revisions thereto.

1. General Inspection Procedures
  - a. At least annually, typically during the first quarter of the fiscal year, ODAFF and EPA shall define the number of compliance audits and inspections to be undertaken by ODAFF. The targets may be modified when appropriate.
  - b. Either EPA or ODAFF may determine that additional inspections are necessary to assess compliance with issued permits or to respond to national

initiatives. Inspections may be performed by EPA only, ODAFF only, or jointly. EPA retains the right to perform inspections at any time but will typically notify ODAFF to give it an opportunity to participate.

- c. Where the results of an ODAFF initiated inspection indicate that the discharger is in violation, ODAFF shall initiate enforcement action within thirty (30) days of the date of the inspection or make a written or computerized record reflecting ODAFF's preliminary determination to postpone or forego all or specific types of enforcement actions or to otherwise exercise ODAFF's enforcement discretions.

## 2. Reporting

- a. ODAFF shall forward to EPA copies of any AgPDES inspection reports upon request within thirty (30) days. When EPA solely conducts an inspection on an AgPDES facility, EPA will provide results of its inspections to ODAFF informally but will provide a written report at ODAFF's request.
- b. ODAFF shall update the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, with inspection and enforcement results for inspections ODAFF conducts.
- c. EPA shall enter inspection and enforcement information into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, for activities it conducts.
- d. EPA and ODAFF agree that inspection schedules are enforcement confidential. Both Agencies agree to maintain their confidentiality using available legal authorities to inform each other of any requests for disclosure, and to coordinate with each other in responding to any such request. EPA and ODAFF retain the right to withhold its respective inspection schedules in the event of any disclosure.

## 3. Miscellaneous Compliance Activities

- a. Citizen complaint and follow up
  - i. ODAFF shall establish and maintain a system to receive, evaluate and track information submitted by the public about alleged AgPDES program violations. The system will be either a physical or electronic record detailing the initial contact, assignment, investigation and final disposition of AgPDES related complaints received from the public. This record shall be made available to EPA and the public pursuant to applicable state and federal law. Complaints received by ODAFF under anonymity or confidentiality shall be handled in accordance to the ODAFF's AEMS Complaint Protocol.
  - ii. Public complaints received by EPA shall be referred to ODAFF when appropriate. If EPA receives either an anonymous or confidential public complaint, EPA shall refer to ODAFF only those portions of the

complaint that are releasable. EPA and ODAFF shall closely coordinate follow up of such complaints.

- b. Should EPA or ODAFF receive information regarding any discharge that may endanger human health or the environment, that information shall immediately be shared with the other party via a telephone call at least within twenty four (24) hours of receipt of the violation report.

## **SECTION VI. ENFORCEMENT**

### **A. GENERAL**

ODAFF shall maintain a vigorous enforcement program. ODAFF shall perform a compliance assessment of all facilities and activities subject to ODAFF's jurisdiction and shall take timely and appropriate enforcement actions for violations of program requirements. Citizens' complaints and unauthorized discharges endangering public health shall receive immediate and paramount attention.

### **B. TIMELY ENFORCEMENT RESPONSIBILITY**

1. Consistent with ODAFF's Enforcement Management System, ODAFF shall be responsible, subject to EPA's oversight and enforcement authority, for taking timely and appropriate enforcement action against: 1) persons in violation of compliance schedules, effluent limitations, any permit condition, or any AgPDES program requirement, and 2) persons discharging without a permit. ODAFF understands and agrees to follow the principles outlined in applicable EPA CWA penalty policies and any future revisions of these policies.
2. For violations which endanger public health or the environment, ODAFF shall immediately seek injunctive relief or shall take other appropriate enforcement action which will ensure the immediate correction of the violation.

### **C. ENFORCEMENT PROCEDURES**

1. ODAFF shall implement the enforcement procedures described in this MOA, the Program Description, Enforcement Management System, and in appropriate federal and state statutes, regulations, rules, and policies. Such procedures shall include, but are not limited to, procedures for:
  - a. Tracking the timeliness of permittee submissions and compliance with compliance schedules.
  - b. Screening of compliance data and the application of Technical Review Criteria (TRC) to determine Significant Noncompliance (SNC).
  - c. Reviewing all inspection reports to determine what, if any, enforcement action may be necessary.

- d. Applying initial compliance or escalated formal enforcement within negotiated time frames to address identified violations.
  - e. Providing copies of enforcement follow up records to EPA for violations that occur or occurred within the first five (5) years of implementation of the AgPDES program, and thereafter, upon EPA's request.
  - f. Maintaining a chronological summary of all violations in a Violation Summary Log. ODAFF will screen all permittee submittals to determine the level and frequency of all violations and will evaluate instances of noncompliance by all permittees.
  - g. Tracking for the QNCR all violations and categorizing them for reporting purposes.
  - h. Receiving and ensuring proper consideration of information about alleged violations that are submitted either orally or in writing by the public.
2. ODAFF shall prepare and submit to EPA Region 6 all reports required by 40 C.F.R. § 123.45, as well as any additional information required to be tracked in ICIS-NPDES. EPA will, in turn, submit all information required by 40 C.F.R. § 123.45 to EPA Headquarters. As a direct user of ICIS-NPDES, ODAFF shall comply with the ICIS-NPDES Policy Statement. ODAFF shall keep EPA informed, through mutually agreed upon procedures, of the compliance status of facilities, enforcement activities completed and court cases filed.

#### D. TRANSFER OF ENFORCEMENT AUTHORITY

Within forty five (45) days of permittee compliance with the EPA action or ODAFF finalized equivalent administrative order, the EPA action which constrained the transfer of enforcement responsibilities shall be closed and the file and primary enforcement lead shall be transferred to ODAFF. The ODAFF shall assume primary enforcement lead on all facilities within its jurisdiction within two (2) years of program approval in accordance with the previously described procedures, except for those facilities in which an EPA administrative fine or EPA civil referral is pending.

#### E. EPA'S OVERSIGHT AND ENFORCEMENT AUTHORITY

1. The provisions of this MOA in no way restrict or limit EPA's oversight and enforcement authority under the Clean Water Act.
2. Any discussion of EPA or ODAFF roles and responsibilities is intended to guide EPA and ODAFF personnel in carrying out an effective partnership, but is not meant to make ODAFF the EPA's agent for purposes of enforcement.
3. In particular, if the EPA determines that ODAFF has not taken timely enforcement action against a violator or that ODAFF's action has not been appropriate, the EPA may proceed with any or all enforcement options available to it under Section 309 of the CWA. EPA generally will not proceed with federal civil enforcement until the ODAFF has been given at least a thirty (30) day notice to take appropriate

enforcement action. Such notification will be made through a written communication to the Commissioner of ODAFF. Notification generally will not be provided when EPA is exercising its emergency power under Section 504 of the CWA. The EPA may determine that ODAFF has failed to take appropriate enforcement action, including but not limited to when ODAFF has failed to seek or impose, where appropriate, penalties in amounts which the EPA believes to be substantially adequate in comparison to the amounts which the EPA would require under similar facts.

4. ODAFF may request that EPA initiate federal enforcement action at any time.

#### F. PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS

In accordance with 40 C.F.R. § 123.27(d)(1) and 2 O.S. § 2A-9(C), ODAFF shall provide for public participation in the State enforcement process by allowing intervention as of right in any civil or administrative action to obtain remedies specified under 40 C.F.R. § 123.27(a)(1), (2) or (3) by any citizen having an interest which is or may be adversely affected.

### **SECTION VII. PROGRAM REVIEW AND REVISION**

#### A. EPA REVIEW OF AgPDES PROGRAM

ODAFF and EPA are responsible for assuring that the AgPDES program is consistent with all requirements within this MOA, the Clean Water Act, 40 C.F.R. Parts 123 -125 and EPA policy and guidance. It is the intent of EPA and ODAFF to work cooperatively to assure that the AgPDES program is consistent with these requirements and to rectify any problems. To fulfill this responsibility:

1. EPA may request ODAFF to submit permits, reports, and enforcement actions for EPA review.
2. EPA may request ODAFF to submit AgPDES permitted CAFO available data including, but not limited to, the name, location, permit status, animal numbers, animal type(s), acreage for land application, and any additional facility-specific data elements tracked by ODAFF, for EPA review.
3. EPA may audit, in detail, ODAFF files and documentation for selected facilities to determine whether:
  - a. Permits are processed and issued consistently with federal requirements;
  - b. Capability exists to discover permit violations when they occur;
  - c. ODAFF's compliance reviews are timely;
  - d. ODAFF's selection and resolution of enforcement actions are appropriate;
  - e. ODAFF's enforcement actions are both timely and effective;

- f. ODAFF's public participation policies, practices and procedures are satisfactory; and
  - g. ODAFF's penalties assessed are appropriate and consistent with requirements of the Clean Water Act and federal regulations.
- 4. EPA may also consider comments from permittees, the public, and federal and local agencies concerning the ODAFF's administration of AgPDES. Any such comments considered by EPA shall be brought to the attention of ODAFF by written correspondence if the commenting party has not previously communicated its comment to ODAFF. If the information has been submitted to ODAFF under a claim of confidentiality, ODAFF will inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 C.F.R. Part 2, Subpart B, and 40 C.F.R. § 122.7.
- 5. EPA shall meet with ODAFF officials to review ODAFF's data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures at a frequency to be determined by EPA.
- 6. EPA shall notify ODAFF thirty (30) days in advance of any program review so that the appropriate ODAFF officials may be available to discuss with EPA individual circumstances and problems.
- 7. EPA shall transmit a copy of the draft audit report to ODAFF for ODAFF's review and comment prior to EPA's issuing a final audit report.

**B. REVIEW OF NEW OR REVISED STATE RULES OR STATUTES**

- 1. ODAFF shall keep EPA fully informed of any proposed legislative or judicial action which acts to amend, rescind or repeal any part of ODAFF's authority to administer the AgPDES program or which may affect its ability to implement the AgPDES program. ODAFF shall monitor bills proposed in the Oklahoma Legislature and shall promptly notify EPA as soon as ODAFF becomes aware of any legislative action which proposes to repeal or enact any statute affecting the implementation of the AgPDES program as well as any changes to rules, directives or policies, including the state water quality standards. Notification under this paragraph shall be given to the EPA Region 6 Office of Regional Counsel. EPA reserves the right to initiate procedures to withdraw the AgPDES program if the Oklahoma Legislature enacts any legislation rendering the AgPDES program less stringent than the CWA or its regulations require. ODAFF shall notify EPA prior to taking any action to:
  - a. Propose or affect any substantial amendment, rescission or repeal of any statute, rule, directive or policy which has been approved by EPA in conjunction with the AgPDES program authorization,
  - b. Propose or enact any statute, regulation, rule, directive or policy which affects the implementation of the AgPDES program, including water quality standards,
  - c. Establish or revise State Technical Standards, or

- d. Modify program authorization documents.
2. If an amendment, rescission or repeal of any statute, rule, directive or policy described above occurs for any reason, including action of the Oklahoma Legislature or a court, ODAFF shall, within ten (10) days of such event, notify and transmit a copy of the text of such revision to the EPA Regional Administrator.
3. If there are revisions to the Clean Water Act and the regulations which implement it, ODAFF shall seek any amendments to its statutes, rules or program authorization necessary to preserve and maintain compliance with NPDES program requirements within the shortest possible time frame, but in no event longer than the time frames set out in 40 C.F.R. § 123.62(e). ODAFF and EPA shall discuss the status and schedule of necessary revisions to the AgPDES program that are required as a result of any changes to the CWA and the regulations promulgated thereunder, as well as related guidance documents.

#### C. PROGRAM REVISION

Consistent with 40 C.F.R. § 123.62, either EPA or ODAFF may initiate a revision to the AgPDES program at any time. Whenever the Commissioner has reason to believe that circumstances have changed with respect to ODAFF's program, revisions to the MOA shall be accomplished as follows:

1. ODAFF shall submit to EPA's Regional Administrator a modified program description, a Statement of Legal Authority (Attorney General's Statement), Memorandum of Agreement, or any such other documents necessary under the circumstances. EPA Region 6, with concurrence of EPA Headquarters, will determine if the proposed revision is substantial or non-substantial.
2. If the proposed revision is determined to be substantial, EPA shall issue a public notice of the proposed revision and provide an opportunity for the public to comment for a period of at least thirty (30) days. The public notice will also provide an opportunity for the public to request a public hearing.
3. After consideration of any public comments, the Regional Administrator, with the concurrence of EPA Headquarters, will approve or disapprove program revisions based on the requirements of 40 C.F.R. Part 123 and the CWA. Notice of approval of a substantial change shall be published in the *Federal Register*. A program revision shall become effective upon the approval of the Regional Administrator.
4. If EPA determines the revision to be non-substantial, notice of approval may be given by letter from the Regional Administrator to the Governor or designee.
5. In order to conform with new or revised promulgations of federal regulations, the State will revise its program within one year of promulgation of the new or revised federal regulations, unless the State must amend or enact a statute to make the



required revision or if a State legislative process must be completed, in which case such revision shall take place within two (2) years. [See 40 C.F.R. § 123.62(e)].

6. ODAFF will provide proposed revisions to EPA in consideration of the date the State needs to have EPA's review completed. After conducting a preliminary review of ODAFF's proposed revision, EPA will provide to ODAFF an estimated schedule for completing its review. The estimated review schedule will depend on the complexity of the proposed revision. EPA will, thereafter, provide ODAFF with quarterly updates, as appropriate, regarding the status of its review.
7. ODAFF will notify EPA whenever it proposes to transfer all or any part of any program from ODAFF to any other State agency, and will identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until given approval by the Regional Administrator under 40 C.F.R. § 123.62(b) and (c).
8. Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to ODAFF's program, he may request, and ODAFF shall provide, a supplemental Statement of Legal Authority (Attorney General's Statement), program description, or other documents or information as are necessary.
9. EPA may initiate withdrawal proceedings under 40 C.F.R. § 123.64 on its own initiative or in response to a petition from an interested person alleging failure of ODAFF to comply with the requirements of 40 C.F.R. Part 123, as set forth in 40 C.F.R. § 123.63. EPA shall notify ODAFF in writing of any inconsistencies or other deficiencies prior to the initiation of withdrawal proceedings. ODAFF shall respond in writing within thirty (30) days. EPA shall notify ODAFF in writing whether noted inconsistencies or deficiencies have been rectified. If the inconsistencies or deficiencies have not been corrected, EPA may proceed with withdrawal proceedings pursuant to 40 C.F.R. § 123.64.

## **SECTION VIII. INDEPENDENT POWERS AND RIGHTS**

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to any applicable federal laws or regulations of the CWA. This MOA is for the administrative convenience of EPA and ODAFF and does not apply to nor confer any rights or benefit, substantive or procedural, enforceable by law or equity on any person not a party to this MOA against ODAFF or EPA, their officers or employees, or any other person. This MOA does not constitute or create any rights or valid defenses to regulated parties in violation of an environmental statute, regulation or permit, including, without limitation, any defense to an enforcement action taken by ODAFF. This MOA does not authorize ODAFF to take any action that is less stringent than or inconsistent with the Clean Water Act. Nothing in this MOA establishes an agency relationship or privity between EPA and ODAFF. No waiver or sovereign immunity is implied or assumed in this MOA.

## **SECTION IX. INCORPORATION BY REFERENCE**

Whenever ODAFF is required to adopt federal standards or requirements, it may do so by reference. Unless permissible under state law, ODAFF shall not prospectively incorporate regulations by reference.

## **SECTION X. COMPUTATION OF TIME**

In computing any period of time prescribed by this MOA, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or state or federal legal holiday, in which case the period extends until the next day which is not a Saturday, Sunday or state or federal legal holiday.

## **SECTION XI. MODIFICATION OF THIS MOA**

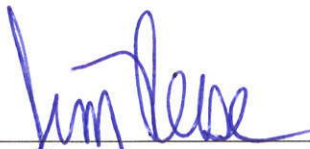
The Regional Administrator and the Commissioner shall review and revise this MOA as necessary. At any time upon determination by either the Regional Administrator or the Commissioner that a revision to this MOA is warranted both parties shall jointly review and revise the MOA as appropriate. Before this MOA may be modified, proposed amendments or revisions must be put in writing and signed by the Commissioner or Regional Administrator. All modifications shall be made in accordance with 40 C.F.R. § 123.62. If the Regional Administrator determines that any modification to the MOA initiated by the ODAFF does not conform to the requirements of Section 402 (33 U.S.C. § 1342), or the requirements of 40 C.F.R. Parts 122-125 or any other applicable federal regulation, or the National Program Guidance, the Regional Administrator shall notify the ODAFF in writing of any required proposed revision or modifications which must be in the MOA.

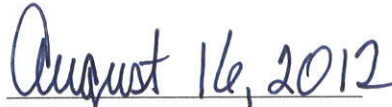
## **SECTION XII. MOA EFFECTIVE DATE**

This Memorandum of Agreement shall become effective when approved by both the EPA Regional Administrator pursuant to 40 C.F.R. § 123.24(a) and the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry.

In witness whereof, the parties execute this MOA.

**FOR OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY:**

  
\_\_\_\_\_  
Jim Reese  
Commissioner of Agriculture

  
\_\_\_\_\_  
Date

**FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Regional Administrator, Region 6

\_\_\_\_\_  
Date

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE OKLAHOMA DEPARTMENT OF AGRICULTURE  
FOOD, AND FORESTRY  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REGION 6  
RELATING TO THE ADMINISTRATION AND  
ENFORCEMENT OF THE ODAFF'S AGRICULTURAL  
POLLUTANT DISCHARGE ELIMINATION SYSTEM  
PROGRAM**

## Table of Contents

	PAGE
SECTION I. GENERAL	4
SECTION II. SCOPE OF AUTHORIZATION	5
SECTION III. PROGRAM RESPONSIBILITIES	7
A. ODAFF RESPONSIBILITIES	7
B. EPA RESPONSIBILITIES	10
C. TRANSFER OF NPDES AUTHORITY	11
SECTION IV. PERMIT PROCESSING, REVIEW, AND ISSUANCE	13
A. TRANSFER OF FILES FROM EPA TO ODAFF	13
B. TRANSFERRED EPA ISSUED NPDES PERMIT	13
C. ODAFF PERMIT APPLICATION REVIEW AND PERMIT DEVELOPMENT	14
D. EPA REVIEW OF DRAFT AND PROPOSED PERMITS, PERMIT MODIFICATIONS, REVOCATIONS AND REISSUANCES	17
E. REQUEST TO REVIEW NOI BY EPA	21
F. WAIVER OF PERMIT REVIEW BY EPA	21
G. PUBLIC PARTICIPATION	22
H. OTHER FEDERAL, STATE AND TRIBAL NOTICE	24
I. ISSUANCE OF PERMITS OR NOTICE TO DENY	24
J. TERMINATION, MODIFICATION, REVOCATION AND REISSUANCE	24
K. ADMINISTRATIVE OR JUDICIAL ACTION	24
L. MAJOR DISCHARGER LIST	25
M. VARIANCES	25
SECTION V. COMPLIANCE MONITORING	25
A. COMPLIANCE TRACKING	26
B. COMPLIANCE REVIEW	26
C. FACILITY COMPLIANCE INSPECTIONS	27

SECTION VI.	ENFORCEMENT	29
A.	GENERAL	29
B.	TIMELY ENFORCEMENT RESPONSIBILITY	29
C.	ENFORCEMENT PROCEDURES	30
D.	TRANSFER OF ENFORCEMENT AUTHORITY	30
E.	EPA'S OVERSIGHT AND ENFORCEMENT AUTHORITY	30
F.	PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS	31
SECTION VII.	PROGRAM REVIEW AND REVISION	31
A.	EPA REVIEW OF AGPDES PROGRAM	31
B.	REVIEW OF NEW OR REVISED STATE RULES OR STATUTES	32
C.	PROGRAM REVISION	33
SECTION VIII.	INDEPENDENT POWERS AND RIGHTS	34
SECTION IX.	INCORPORATION BY REFERENCE	34
SECTION X.	COMPUTATION OF TIME	34
SECTION XI.	MODIFICATION OF THIS MOA	35
SECTION XII.	MOA EFFECTIVE DATE	35

MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6 (EPA), AND THE OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY (ODAFF) RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF THE ODAFF'S AGRICULTURAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (AgPDES) PROGRAMS

**SECTION I. GENERAL**

Federal regulations found at 40 C.F.R. §§ 123.21(a) and 123.24 require any state which seeks to administer the National Pollutant Discharge Elimination System (NPDES) program to execute a Memorandum of Agreement setting forth the manner in which state assumption of Clean Water Act (CWA) Sections 301, 302, 306, 307, 402, 403, and 405 authority is to be undertaken. This document is the required Memorandum of Agreement (MOA). This MOA establishes policies, responsibilities and procedures under which the United States Environmental Protection Agency (EPA) will authorize and oversee, and the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF or "Department") will administer a partial NPDES program pursuant to CWA Section 402 (33 U.S.C. § 1342) and 40 C.F.R. Part 123. ODAFF's partial program will be referred to as the Agricultural Pollutant Discharge Elimination System program or AgPDES. Section 402(n) of the CWA defines the circumstances under which EPA may approve a partial NPDES program submitted by a State.

The establishment and implementation of ODAFF's AgPDES program is in accordance with Section 402 of the Clean Water Act (hereinafter "CWA") and implementing federal regulations, the Oklahoma Agriculture Pollutant Discharge Elimination System Act (2 O.S. §§ 2A-1 *et seq.*), the Oklahoma Agriculture Environmental Permitting Act (2 O.S. §§ 2A-21 *et seq.*), and Oklahoma Administrative Code §§ 35:44-1-1 *et seq.*

The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by the Department are discharges associated with concentrated animal feeding operations ("CAFO"), discharges from the application of biological pesticides or chemical pesticides that leave a residue, discharges resulting from silviculture activities, and discharges of storm water from agricultural activities.

The COMMISSIONER and the REGIONAL ADMINISTRATOR hereby agree that this MOA applies to permits issued by ODAFF pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act (2 O.S. §§ 2A-1 *et seq.*), the Oklahoma Agriculture Environmental Permitting Act (2 O.S. §§ 2A-21 *et seq.*), and Oklahoma Administrative Code §§ 35:44-1-1 *et seq.* for discharges of pollutants to navigable waters of the United States, as defined in the CWA, that are within the scope of the program authorization set forth in Section II. of this MOA.

The COMMISSIONER and the REGIONAL ADMINISTRATOR hereby agree to maintain a high level of cooperation and coordination between ODAFF and EPA in a partnership to assure successful and effective administration of the AgPDES program.

ODAFF shall administer the AgPDES program in accordance with the CWA, federal and state statutory and regulatory requirements implementing the CWA, this MOA and any separate AgPDES related agreements and work plans entered into between ODAFF and EPA. ODAFF has primary responsibility for establishing AgPDES program strategies and priorities consistent with national NPDES program goals and objectives. Strategies and priorities for issuance, compliance monitoring and enforcement of AgPDES permits shall be consistent with this MOA and any other AgPDES related agreements entered into between ODAFF and EPA. However, pursuant to 40 C.F.R. § 123.24(c), the requirements of this MOA shall override any other AgPDES related agreements entered into between ODAFF and EPA.

Other guidance documents relevant to the AgPDES program include, but are not limited to:

- The National Guidance for the Oversight of the NPDES Program, EPA 1986; and
- Enforcement Management System (EMS) for NPDES Program, EPA 1989.

## **SECTION II. SCOPE OF AUTHORIZATION**

The COMMISSIONER and the REGIONAL ADMINISTRATOR agree that EPA has authorized ODAFF to administer a major category partial NPDES program under Section 402(n)(3) of the CWA. The Department's program is a complete permit program for all discharges under the Department's jurisdiction and represents a significant and identifiable part of the state program required by § 402(b) of the CWA. The AgPDES program administered by the Department covers all discharges within Oklahoma except for those beyond the Department's statutory authority and those retained by EPA, as set forth by this MOA. The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by the Department are discharges from concentrated animal feeding operations ("CAFO"), discharges of storm water from agricultural activities, discharges from the application of biological pesticides or chemical pesticides that leave a residue and discharges resulting from silviculture activities related to tree growing, planting management, log transport and log storage, and other activities, except those related to wood preservation and processing regulated pursuant to 40 C.F.R. Part 429 (Timber Products Processing) and Part 436 (Mineral Mining and Processing), which are regulated by the Oklahoma Department of Environmental Quality

Pursuant to State law, the Department is identified as the State agency with authority to regulate specific classes of agricultural activities, including point source discharges subject to the AgPDES program. Generally, the Oklahoma Agriculture Code (2 O.S. § 2A-6(A)) prohibits any discharge of pollutants into or adjacent to waters of the state except in accordance with a permit issued by the Director of the AgPDES. The Oklahoma Environmental Quality Act (27A O.S. § 1-3-101(D)) specifically identifies



the Department as the state agency responsible for regulating point sources discharges from agricultural crop production, agricultural services, livestock production, animal waste, and silviculture. The Department has the necessary authority to regulate discharges resulting from: agricultural and non-agricultural applications of pesticides; CAFOs; facilities storing agricultural chemicals, and storm water discharges for activities subject to the Department's areas of environmental responsibility. The Department does not have regulatory authority over discharges from industrial processes, municipal treatment works, and municipal and industrial storm water, which the Oklahoma Environmental Quality Act (27A O.S. § 1-3-101(D)(2)) has expressly delegated to ODEQ. EPA retains regulatory authority for discharges that neither ODAFF nor ODEQ are authorized to regulate pursuant to program approvals under § 402(b) of the CWA.

ODAFF has also been identified as the state agency with authority to issue both individual and general permits pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act (2 O.S. §§ 2A-1 *et seq.*), the Oklahoma Agriculture Environmental Permitting Act (2 O.S. §§ 2A-21 *et seq.*), and as further identified in the Statement of Legal Authority for the Oklahoma Department of Agriculture, Food, and Forestry's National Pollutant Discharge Elimination System program issued by the General Counsel for the ODAFF pursuant to 40 C.F.R. § 123.23 (Attorney General's Statement).

EPA retains authority to issue NPDES permits to facilities and activities that discharge into receiving waters in Indian Country. For purposes of this MOA, the term "Indian Country" means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 40 C.F.R. §§ 122.2, 123.2. EPA treats as reservations those trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation. *See, e.g.*, 58 Fed. Reg. 67966, 67970 (December 22, 1993) (citing *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991)).

This MOA relates solely to the Department's administration of the AgPDES program as approved by EPA consistent with the requirements of the federal Clean Water Act and EPA's regulations. Nothing in this MOA shall be construed as addressing the Department's or the State of Oklahoma's authority over waters or interests in waters for any other purpose or as affecting any rights or interests of Indian tribes in such waters. This MOA shall not be deemed to establish, expand or alter the authority of the State with respect to Indian country or alter the rights that any federally recognized tribes may have pursuant to other federal law.

### **SECTION III. PROGRAM RESPONSIBILITIES**

Upon program approval by the Regional Administrator, ODAFF shall have sole responsibility for the issuance of all NPDES permits under the AgPDES program for discharges subject to ODAFF's authority with respect to carrying out the approved NPDES program.

#### **A. ODAFF RESPONSIBILITIES**

In accordance with the priorities and procedures established in this MOA, ODAFF shall:

1. Develop, maintain, and exercise the legal authority and the resources required to carry out all aspects of the AgPDES program, including the legal authority to carry out all of the requirements for permitting (40 C.F.R. § 123.25), compliance evaluation (40 C.F.R. § 123.26), and enforcement authority (40 C.F.R. § 123.27) as described in detail in the Statement of Legal Authority (Attorney General's Statement).
2. Develop and maintain the resources necessary to carry out the responsibilities specified in this MOA and as prescribed by federal and state law.
3. Process permit applications and issue, reissue, modify, deny or revoke and reissue all AgPDES permits subject to ODAFF authority as set forth in Section II of this MOA.
4. Initiate procedures to amend, revoke, suspend, renew, or terminate any permits upon the request of EPA. ODAFF will process the request in accordance with applicable state laws or may require the permittee to submit an updated application if further information is requested before proceeding.
5. Ensure that the conditions of any draft permit conform to the applicable water quality standards of all affected states and tribes as prescribed by 40 C.F.R. § 122.44(d)(4). Provide timely notice of such draft permit and any other information requested by that state or tribe as required by 40 C.F.R. § 124.10(c), or requested by any Indian tribe that is included on the electronic mailing list pursuant to Section IV.G(4) of this MOA.
6. Comprehensively evaluate and assess compliance with schedules, effluent limitations, and other permit conditions, as outlined in Section V. of this MOA.
7. Develop and maintain a Continuing Planning Process document per CWA 303(e) and 40 CFR §130.5.
8. Maintain a vigorous enforcement program by taking timely and appropriate enforcement actions in accordance with the CWA, national and regional Guidance, and applicable state law as outlined in Section VI. of this MOA and the AgPDES Enforcement Management System (EMS), with any modifications thereto.

9. Input nationally required data elements for all AgPDES permitted facilities into EPA's national permit/compliance/enforcement tracking system, currently the Integrated Compliance Information System–National Pollutant Discharge Elimination System (ICIS-NPDES) database, in accordance with the schedule for transfer of such data set out in Section IV. A. This includes required data elements and data for non-major dischargers covered by an individual or general permit.
10. Make available to the public with no restrictions all effluent data, permits and permit applications pertaining to the AgPDES program. Other AgPDES data will be made available to the public consistent with 40 C.F.R. § 122.7.
11. Make available to EPA any information obtained or used by ODAFF under the AgPDES program upon request and without restriction due to claims of confidentiality. ODAFF shall determine if information submitted by an applicant under a claim of confidentiality is confidential in accordance with state law and identify the material accordingly. ODAFF shall notify EPA of any confidential information that is transmitted to EPA. EPA shall treat such information as confidential in accordance with 40 C.F.R. Part 2, Subpart B and 40 C.F.R. § 122.7.
12. Implement a public participation process that provides, supports, and encourages public participation as outlined in Section IV. G.
13. Consistent with 40 C.F.R. § 124.10 and after providing EPA the opportunity to review and comment on the draft permit package, provide public notice of a draft general permit for public comments, on the ODAFF website as well as publishing the notice in the form of a legal notice in two major newspapers, one in Oklahoma City and one in Tulsa. The draft general permit and fact sheet shall also be posted on ODAFF's website for a minimum of thirty (30) days.
14. Maintain adequate public files for each permittee at the ODAFF office located at 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, which are easily accessible to EPA and the public for program evaluation. Such files must include, at a minimum, copies of, or access to electronic copies of:
  - a. Permit applications including attachments;
  - b. Public notices;
  - c. Fact sheets or statements of basis on the draft permits;
  - d. Draft and issued permits;
  - e. Studies supporting permit decisions (e.g., mixing zone, waste load allocation, total maximum daily load, site specific analysis or in stream sampling data, and water quality standards);
  - f. Comments received on draft permits;
  - g. Responses to comments received on draft permits;
  - h. Comments received on proposed final permits;
  - i. Proposed final permits;
  - j. Final (issued) permits or final orders of denial;

- k. Fact sheets or statements of basis reflecting the final (issued) permit;
- l. Discharge Monitoring Reports;
- m. Annual reports from permittees, if required;
- n. Compliance schedule reports;
- o. All compliance and noncompliance reports;
- p. Copy of the Violation Summary Logs for the particular facility and actions;
- q. Changes to compliance schedule reports;
- r. Construction reports;
- s. All inspection reports;
- t. All enforcement actions;
- u. Notices of Intent (NOIs) or authorizations to discharge under general permits, including attachments (e.g., Nutrient Management Plans);
- v. Storm water related documents received by ODAFF, including pollution prevention plans for storm water discharges from construction sites associated with agriculture activities, etc.;
- w. Requests for hearings, motions for reconsideration and rehearing, and any order granted by ODAFF;
- x. Any Nutrient Management Plan (NMP) submitted with an NOI or permit application and any revisions to an NMP; and
- y. Notice of Termination (NOT).

15. Ensure that EPA is kept fully informed and updated regarding any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, including the following, as well as any other information that EPA requests:

- a. Draft and final policy and program development documents related to the AgPDES program;
- b. Draft and final statutes and rules related to the AgPDES program;
- c. State Technical Standard that meets the requirements of 40 C.F.R. § 123.26;
- d. New case law, settlement agreements, and administrative or judicial opinions regarding the rules related to the AgPDES program or that impact ODAFF's ability to implement the AgPDES program in accordance with federal requirements; and
- e. Draft and final technical guidelines and policies that pertain to the AgPDES program.

16. Ensure, pursuant to 40 C.F.R. § 123.62, that any proposed revisions of the ODAFF AgPDES program or to the State's legal authority conform to the requirements of 40 C.F.R. § 123.62 and that those revisions are submitted to EPA for approval. In accordance with 40 C.F.R. § 123.62(e), new applicable federal NPDES regulations shall be incorporated into state regulations within one year of federal promulgation or within two years if a state statute must first be enacted.

17. Submit to EPA the information described in Section VII. of this MOA, the annual State Section 106 Program Plan, if ODAFF receives 106 grant funds from EPA to support the AgPDES Program, the Performance Partnership Agreement and

applicable portions of 40 C.F.R. Part 123. Additionally, upon EPA request, ODAFF shall submit specific information and allow access to files as necessary for evaluating ODAFF administration of the AgPDES program.

## B. EPA RESPONSIBILITIES

In accordance with the priorities and procedures established in this MOA, EPA shall:

1. Transfer all existing NPDES permits applicable to the AgPDES program for administration in accordance with the provisions set forth in this MOA and by 40 C.F.R. §§ 123.41 and 123.42.
2. Provide funding to ODAFF to support AgPDES program activities to the maximum extent possible under applicable law and existing budget requirements and priorities. It is recognized that it is the state's responsibility after program approval to run and manage the AgPDES program with or without the assistance of Federal funding.
3. Oversee the ODAFF administration of the AgPDES program on an ongoing basis for consistency with the CWA, this MOA, the 106 Program Plan or the Performance Partnership Agreement, and all applicable federal regulations, guidelines and policies.
4. At ODAFF's request, provide training, technical support, and assistance in the following areas as appropriate and as resources and funding allow:
  - a. Interpretation of NPDES and Effluent Limitation Guidelines (ELGs) regulations;
  - b. Development of technology based effluent requirements and related "best management practices," including those based upon the use of "best professional judgment;"
  - c. Development of water quality based effluent limitations to meet state water quality standards.
  - d. General technical assistance in processing permit applications;
  - e. Use of the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES;
  - f. Use of EPA utilized Enforcement Economic models (including BEN and ABEL);
  - g. Training for permit writers and administrative and technical staffs;
  - h. Inspection program; and
  - i. Compliance and enforcement.
5. Ensure that ODAFF is kept fully informed and up to date to the extent allowed by law and subject to confidentiality considerations at EPA's discretion concerning:
  - a. EPA contractor reports, draft and final EPA development documents, and draft, proposed and final ELG regulations for various industry categories;
  - b. Final settlement agreements between EPA and litigants which concern the

interpretation or modification of ELG regulations for various industry categories;

- c. Draft, proposed, and final versions of EPA regulations, technical guidance, policy and procedures which pertain to the implementation of the AgPDES program (i.e., NPDES national goals, permit development, compliance and enforcement for CAFOs, pesticides, storm water, and silviculture); and
  - d. Copies of administrative orders, settlement agreements and court decisions pertaining to NPDES, CAFO, pesticides, storm water and any other implementing regulations pertinent to the AgPDES Program in Oklahoma.
6. Provide ODAFF with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep ODAFF informed, to the extent allowed by law and subject to confidentiality considerations at EPA's discretion, of the development of national NPDES program policy statements, strategies, performance measures and related guidance and will seek input from ODAFF, when appropriate.
  7. Input all required data into EPA's national permit/compliance/enforcement tracking system, currently ICIS-NPDES, for the facilities EPA retains permanent authority over.

#### C. TRANSFER OF NPDES AUTHORITY

Upon program authorization, ODAFF shall assume administration of AgPDES related NPDES permits issued prior to program authorization, including all the functions of permitting, compliance monitoring, and receipt of self monitoring reports and enforcement, in accordance with this MOA and the schedule for transfer of NPDES permit administration set out in Section IV. A. EPA administration of permits after the date of program authorization is detailed below.

ODAFF and EPA will exchange permit and program information consistent with the procedures described by 40 C.F.R. §§ 123.41, 123.42 and 123.43. Upon authorization, and in accordance with the transfer schedule in Section IV. A., ODAFF shall:

1. Assume NPDES permitting, compliance monitoring and enforcement authority for all facilities subject to ODAFF's authority as set forth in Section II in accordance with the transfer schedule in Section IV. A. of this MOA.
2. Receive and review Discharge Monitoring Reports (DMRs), if applicable, and conduct inspections as appropriate for all permits pursuant to the transfer schedule in Section IV.
3. Retain the right to enforce more stringent state law, in addition to federal law, at facilities with EPA issued NPDES permits that are transferred to ODAFF for administration after program authorization.

Upon program approval, EPA will cease to issue NPDES permits that are subject to ODAFF's AgPDES authority as set forth in Section II of this MOA. Permits transferred to ODAFF after any of the following activities shall be transferred in accordance with procedures described in Section IV. EPA will retain responsibility for administering and enforcing permits as follows:

1. Permits out for public notice under the NPDES program, and permits for which EPA has substantially completed the permitting process or concluded a public review period until such time that EPA completes its permit issuance related activities. Upon program approval, EPA will provide a list of these permits to ODAFF. Once EPA has completed its actions, relevant permit files will be transferred, and ODAFF will assume administration. ODAFF is responsible for completing all actions to final issuance of these permits and will prepare proposed final permits or utilize EPA prepared proposed final permits.
2. Permits for which variances or modifications have been requested or permits on appeal at the time of program authorization until such time as the matter is resolved. EPA will make every effort to resolve these requests as quickly as possible. Upon resolution of the variance or modification request or an administrative or judicial challenge, EPA shall notify ODAFF and then transfer permit administration responsibilities and relevant permit files to ODAFF. ODAFF is responsible for modification or reissuance of the permits as needed.
3. Permits over which there are pending or ongoing EPA enforcement actions. EPA shall retain jurisdiction over these permits until final resolution of the enforcement actions by: 1) the permittee's compliance with the requirements of a compliance order, consent agreement or court order resulting from the EPA enforcement action; 2) withdrawal of the action by EPA; 3) a court decision dismissing the action; or 4) the imposition of an equivalent state enforcement action by ODAFF upon agreement by the EPA. EPA shall make every effort to resolve these enforcement matters as quickly as possible. As each EPA enforcement action is resolved, EPA shall notify ODAFF and transfer relevant permit files and administration of the permits.
4. Permits where workload and resource constraints prompt EPA and ODAFF to agree that EPA will develop and process the permits. Although EPA may propose draft permits, all such permits under ODAFF authority shall be finally issued by ODAFF. All official permit records shall subsequently be transferred from EPA to ODAFF.
5. Permits for facilities and activities that discharge into receiving waters in Indian Country remain under EPA NPDES jurisdiction.
6. Permits for facilities under the jurisdiction of the Oklahoma Corporation Commission remain under EPA NPDES jurisdiction.

## **SECTION IV. PERMIT PROCESSING, REVIEW, AND ISSUANCE**

Upon AgPDES program authorization, ODAFF is responsible for drafting, providing public notice for, issuing, reissuing, modifying, denying, revoking and reissuing, and terminating AgPDES permits in accordance with this MOA, the CWA and its implementing regulations, and applicable state statutes and rules.

### **A. TRANSFER OF FILES FROM EPA TO ODAFF**

Within thirty (30) days of authorization of the ODAFF AgPDES program by the Regional Administrator, EPA shall deliver all relevant permit files requested by ODAFF. EPA will utilize available in house information to ensure all files are complete prior to delivery to ODAFF.

Permit files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all DMRs, all compliance reports, all enforcement actions, and all other pertinent information and correspondence. Relevant information shall include but is not limited to application forms, correspondence, draft permits, public notices, fact sheets, and statements of basis.

The Commissioner will notify the Regional Administrator if any file received from EPA for a transferred EPA issued permit is incomplete and include a list of missing materials. Within sixty (60) days of such notification, EPA shall provide a copy of the missing materials to ODAFF unless, after diligent effort, the information cannot be located. At that point EPA will notify ODAFF that the information is not available.

In case of a required compliance or enforcement action arising within thirty (30) days of program approval, EPA will expedite transfer of applicable permit files at ODAFF's request.

### **B. TRANSFERRED EPA ISSUED NPDES PERMITS**

1. Permitting and enforcement authority for any AgPDES-related federally issued individual or general NPDES permit, in effect at the time EPA authorizes the AgPDES program, transfers to ODAFF upon approval except as specified in Section III.C. The transferred permit serves as an AgPDES permit and its terms and conditions continue in effect until permit expiration unless modified or revoked and reissued by ODAFF.
2. An administratively extended EPA issued permit becomes an AgPDES administratively extended permit at the time of program authorization. Until ODAFF reissues it, an administratively extended permit remains in effect and enforceable.
3. Within thirty (30) days of EPA transferring a current or administratively extended permit, ODAFF shall:



- a. Notify the permittees, with a copy to EPA, that the authority to administer the permit was transferred to ODAFF and that the EPA issued NPDES permit shall serve as an AgPDES permit and remain in effect until the natural expiration of the permit, unless revoked and reissued by ODAFF.
  - b. Send the permittees updated contact information for reporting requirements under the permit.
  - c. Provide a new cover page to the permit including: the name of the permit, the date that the permit authority is transferred from EPA to ODAFF, permit effective date, ODAFF contact information, and the new permit number, if different.
4. If timely application for reissuance of a transferred EPA issued permit is submitted, ODAFF shall take action on that application prior to its expiration.
5. ODAFF will reissue or replace transferred general permits prior to expiration or as soon as practicable if already expired. An EPA issued general permit assumed by ODAFF will continue until the effective date of an ODAFF issued AgPDES permit to replace it or until ODAFF otherwise terminates the EPA issued permit.
6. An ODAFF issued AgPDES permit for a facility replaces its EPA issued NPDES permit.

#### C. ODAFF PERMIT APPLICATION REVIEW AND PERMIT DEVELOPMENT

For purposes of the AgPDES program and this MOA, “draft permit” means a draft document prepared by ODAFF following a determination that a Tier II or Tier III permit application is administratively and technically complete. The application is considered complete when the application form is properly filled out and supporting data are adequately presented with technical calculation or justification. This document is prepared for public notice and comment, indicating ODAFF’s tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit following a formal public meeting if requested. “Proposed permit” means a document based on a Tier III draft permit and prepared by ODAFF after consideration of comments received on the draft permit indicating ODAFF’s intention to issue a final Tier III permit pending the outcome of an administrative hearing, if any.

Under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, a “formal public meeting” is a public forum conducted by a presiding officer, at which an opportunity is provided for the presentation of oral and written comments. Pursuant to the Act, “Public meeting” shall mean a ‘public hearing’ when held pursuant to the requirements of the NPDES provisions in the Code of Federal Regulations or the Oklahoma Agriculture Pollutant Discharge Elimination System Act. A public meeting shall not be a quasi-judicial proceeding.” 2 O.S. §§ 2A-1 *et seq.* A “public meeting” satisfies the requirements for a public hearing under 40 C.F.R. Part 124. The formal public meeting is distinguished from the process meeting as the process meeting is an

initial informational meeting for the public regarding a Tier III application and does not replace the public hearing required by 40 C.F.R. Part 124.

Under the Oklahoma Agriculture Environmental Permitting Act, an “administrative hearing” on the permit is a quasi-judicial proceeding conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture.

## 1. Review of Applications

- a. ODAFF shall be responsible for the administrative and technical review of all wastewater and storm water discharge permit applications subject to the approved AgPDES program.
- b. During ODAFF staff administrative completeness determination and technical review of permit applications, ODAFF shall, when necessary, contact the applicant to request changes, revisions, corrections or supplemental submissions.
- c. ODAFF staff will inform applicants of their application status, after review is completed and the draft permit is ready for public notification.
- d. ODAFF will notify the applicant and the public if the Director of AgPDES decides to tentatively deny the application.
- e. ODAFF will ensure that the appropriate application information is coded into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES. New permit application information shall be input within fourteen (14) days after ODAFF’s completeness determination.

## 2. Permit Development

Permits issued by ODAFF shall include requirements necessary to assure compliance with the Clean Water Act, Oklahoma Water Quality Standards, and any applicable state water quality standards implementation procedures. Permits must assure that discharges are required to receive an appropriate level of treatment prior to discharging and that the designated uses for receiving streams are protected.

AgPDES permit applications will be designated as Tier I, Tier II or Tier III pursuant to the designation process established under the Oklahoma Agriculture Environmental Permitting Act and rules promulgated by the Board. Pursuant to 40 C.F.R. § 122.28(b)(2), incorporated by reference at OAC § 35:44-1-2(a)(2)(L), “[a] complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for purposes of §§ 122.6, 122.21 and 122.26.” Although the Oklahoma Statutes and rules authorizing and implementing the AgPDES program refer to “applications for authorizations to discharge under general permits” instead of NOIs, for purposes of this MOA and the AgPDES program, the two terms are interchangeable. For the sake of clarity and consistency with the federal NPDES program, the term NOI is used throughout this document.

- a. Tier I includes applications for changes to individual discharge permits or changes to authorizations to discharge under general permits that would constitute “minor modifications” under 40 C.F.R. § 122.63 (incorporated by reference at OAC 35: 44-1-2). Tier I will also include new or renewed NOIs under general permits other than a CAFO general permit and applications for major modifications to an authorization to discharge under any general permit other than a CAFO general permit. It should be noted that changes to a Nutrient Management Plan (which is part of a CAFO permit) require a separate public notice and participation process under 40 C.F.R. § 122.42(e)(6)(ii) (incorporated by reference at OAC 35: 44-1-2). Once a Tier I application has been declared complete, the assigned technical supervisor or a local representative, if authorized by ODAFF, will either issue the requested authorization or deny the application.
- b. Tier II includes applications for authorization to discharge under a CAFO general permit and applications for major modification of an authorization to discharge under a CAFO general permit. All new general permits as well as applications to modify or renew existing general permits will also be subject to the requirements for Tier II applications. In addition, Tier II will cover applications for new individual discharge permits for small and medium CAFOs and all “non-major” facilities other than CAFOs. Tier II will also cover applications for renewal of or major modification to all individual discharge permits, including individual CAFO permits. Upon filing a Tier II application with ODAFF, the applicant shall publish notice of the filing as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. “Local to the proposed new site or existing facility” is interpreted by the Department to be analogous to and as broadly construed as the federal standard of “area affected by the facility or activity” as specified in 40 C.F.R. 124.10(c)(2)(i). Once a Tier II application has been declared administratively and technically complete, ODAFF staff will prepare a fact sheet and a draft permit or draft denial of permit. Notice of a draft permit will be given by the applicant and notice of a draft denial will be given by ODAFF. Also, ODAFF publishes public notice of any draft general permit it develops. A public notice shall identify public locations where the draft denial or draft permit may be viewed, including a public location in the county where the proposed new site or existing facility is located, and shall provide a set time period of at least thirty (30) calendar days after publication of public notice for public comment and an opportunity to request a public meeting on the draft denial or draft permit. If no comment or public meeting request on a Tier II permit is received in the time period allowed (thirty (30) days starting on the date of public notice) and no public meeting is held, ODAFF shall issue or deny the final permit.

For Tier II draft permits or draft denials for which comments or a request for public meeting are received in the time period allowed (thirty (30) days starting on the date of public notice) or for which a public meeting is held,

ODAFF shall consider all comments, prepare a response to comments document, and issue or deny the final permit accordingly.

Applications for coverage under a CAFO general permit, which are Tier II applications, require submittal of a Nutrient Management Plan (NMP) in addition to an NOI. In accordance with the Second Circuit Court of Appeal's decision in Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2d Cir. 2005) and EPA's permitting requirements for CAFOs set out at 40 C.F.R. § 122.23, ODAFF will review NOIs submitted by CAFO owners or operators to ensure that the NOI includes the information required by 40 C.F.R. § 122.21(i)(1), including an NMP that meets the requirements of § 122.42(e) and applicable effluent limitations and standards. ODAFF has incorporated 40 C.F.R. §§ 122.23, 122.21(i)(1) and 122.42(e) by reference. Once ODAFF makes a preliminary determination that the NOI meets the applicable requirements, ODAFF will make available for review and public comment the NOI, including the NMP, and the draft terms of the NMP to be incorporated into the permit. The public notice, opportunity for public comment, opportunity to request a formal public meeting and any public meeting if held, will follow the same procedures and requirements applicable to other Tier II draft permits as discussed above.

- c. Tier III shall include applications for new individual discharge permits for large CAFOs and "major" non-CAFO facilities, as well as any other applications for new individual discharge permits not covered by Tier II. Issuance or denial of Tier III permits shall follow the same process used for Tier II permits, except that the process for Tier III permits shall include additional opportunity for public participation. The notice of filing of a Tier III application by the applicant shall include an opportunity to request a "process meeting," which is defined under the Oklahoma Agriculture Environmental Permitting Act as "a meeting open to the public which is held by the Department to explain the permit process and the public participation opportunities applicable to a specific Tier III application." In addition, following the public comment period and public meeting, if any, on a Tier III draft permit or draft denial, ODAFF shall either issue a final denial of the permit or prepare a proposed permit. If a proposed permit is prepared, the applicant shall publish notice of ODAFF's tentative decision to issue the proposed permit and shall provide a twenty (20) working day opportunity to request an administrative hearing on the proposed permit.

#### D. EPA REVIEW OF DRAFT AND PROPOSED PERMITS, PERMIT MODIFICATIONS, REVOCATIONS AND REISSUANCES

ODAFF may consult with EPA while drafting a permit to ensure that the draft will comply with federal guidelines and requirements. If ODAFF chooses to consult, ODAFF shall transmit to EPA appropriate portions of working documents as appropriate for review. At the time of transmittal, EPA and ODAFF will agree to a timeline to complete

any review.

Unless waived pursuant to Section IV. F. of this MOA, and as authorized by 40 C.F.R. § 123.24(d) and 40 C.F.R. § 123.44(j), EPA shall receive from ODAFF draft permits, permit modifications, revocations, and reissuances.

1. Prior to issuance of public notice of a permit action, ODAFF will provide EPA one copy of the complete draft permit package, which shall include the public notice, the application, the draft permit, the fact sheet or statement of basis, and any permit rationale for the draft permit as well as any corresponding supporting data. If the draft permit package is for a CAFO individual permit, ODAFF will include the permittee's nutrient management plan.
2. Upon receipt of the complete draft permit package, EPA review and its comments, objections and recommendations shall be performed in accordance with 40 C.F.R. § 123.44. Reviews will not be performed on incomplete packages. EPA will notify ODAFF of an incomplete package and request additional information. Comments or objections submitted to ODAFF shall include a statement of the reason for comment or objection and the supporting section of the CWA, regulation, or policy. ODAFF will not proceed with issuance of a permit if there are unresolved EPA objections to the permit.
3. EPA objection to issuance of a draft permit must be based upon one or more of the conditions found at 40 C.F.R. § 123.44(c). ÷
  - a. For Individual Permits:
    - i. Within the initial thirty (30) days after receipt of the complete draft permit package:
      - EPA may make a general objection by providing written notice to ODAFF. The notice shall set forth in writing the general nature of the objection in accordance with 40 C.F.R. § 123.44(b)(1).
      - EPA may make an interim objection to issuance of the permit if insufficient information is included in the draft permit package to determine if the permit complies with the Clean Water Act. If EPA makes such an interim objection, EPA shall have the full period of time allowed under this MOA, thirty (30) days for a general objection and ninety (90) days for a specific objection, after receipt of the additional information from ODAFF to provide comments, recommendations or objection.
      - EPA may request additional time up to sixty (60) days beyond the initial 30 day review period to review the draft permit package. Upon request, EPA will have an additional sixty (60)

days beyond the initial 30 day review period in which to provide comments and/or objections.

- ii. If EPA has not provided ODAFF with a general or interim objection or requested additional time to review the draft permit package within thirty (30) days of receipt of the complete draft permit package, ODAFF may proceed with issuance of the public notice. If EPA does not provide ODAFF with comments and/or objections within ninety (90) days of EPA's receipt of the permit package, ODAFF may assume EPA has no objection to the issuance of the permit and may proceed with public notice of the permit.
- iii. If, following its general objection, EPA continues to object to ODAFF's issuance of the permit, EPA must provide ODAFF with a specific objection within ninety (90) days from EPA's receipt of the draft permit package, in accordance with 40 C.F.R. § 123.44. A specific objection must include the reason and support for objection and must include EPA's recommendation of the specific actions required for ODAFF to eliminate the objection.
- iv. EPA and ODAFF may mutually agree to extend EPA's review time to the full ninety (90) days without filing a general objection within the first thirty (30) days.

b. For General Permits

- i. In the case of general permits, EPA shall have ninety (90) days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the draft general permit. If EPA has not provided ODAFF comments and/or objections within ninety (90) days of receipt of the complete draft general permit package, ODAFF may assume EPA has no objection to the issuance of the permit and may proceed with issuance of the public notice.
  - ii. EPA may make an interim objection to issuance of the permit if insufficient information is included in the draft general permit package to determine if the permit complies with the Clean Water Act. If EPA makes such an interim objection, EPA shall have the full ninety (90) day review period provided by this MOA after receipt of the additional information from ODAFF to provide comments, recommendations or objection.
4. Within ninety (90) days of receipt by the State of an objection by EPA, the State or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 C.F.R. § 123.44(e) and (f). If the hearing is requested by the State, EPA must hold the hearing. Following any public hearing,

EPA must reaffirm the original objection, modify the terms of the objection, or withdraw the objection and must notify the State of its decision.

5. If the State does not submit a revised permit that meets EPA's objections within ninety (90) days of the notice of objection (or thirty (30) days following reaffirmation of the original objection or modification of the objection following a public hearing on the objection), EPA may issue the permit. Following the issuance of an EPA issued permit, authority to reissue the permit reverts to the State.
6. If EPA knows that no comments and/or objections will be submitted on a specific permit, EPA will notify ODAFF of that fact.
7. When cause exists and consistent with 40 C.F.R. § 122.62, EPA may request a modification to an individual permit or to an authorization for coverage under a general permit or an NMP submitted along with an NOI for coverage under a CAFO general permit by making an official request in writing to ODAFF stating the reasons for such modification or change. ODAFF will initiate procedures to comply with such a request within thirty (30) days after receiving the request.
8. At EPA's request, ODAFF shall supply EPA with copies of the documents described above for permits for which EPA has waived review.
9. ODAFF shall proceed with permit issuance if 1) EPA has not submitted comments, objections or recommendations in writing within the time frames set out in paragraph 3 of this section; and 2) ODAFF received no significant public comments on the draft permit during the public review period.
10. Once the public comment period on a draft permit is complete, ODAFF shall prepare its response to comments and make any necessary changes to the permit and fact sheet. ODAFF may issue the permit without further review by EPA unless:
  - a. A proposed permit is prepared in the case of a Tier III application and the proposed permit differs from the draft permit previously reviewed by EPA. If the proposed permit differs from the draft permit reviewed by EPA, ODAFF will forward the permit to EPA for review prior to publishing the proposed permit for comment.
  - b. The permit to be issued differs from the draft permit reviewed by EPA, unless the changes are insignificant and EPA agrees that additional review is not needed;
  - c. EPA objected to the draft or proposed (in the case of Tier III applications) permit;
  - c. There were significant comments on the draft or proposed (in the case of Tier III applications) permit; or
  - d. EPA requests in writing to review the permit to be issued.

11. If any of the conditions specified in the previous paragraph apply to the permit to be issued ODAFF shall send EPA one copy of the permit to be issued, copies of the written public comments received, including hearing records, and ODAFF's response to comments. EPA may comment upon, object to, or make recommendations to the permit to be issued pursuant to the procedures and timeframes discussed above and included in 40 C.F.R. § 123.44. ODAFF's process is consistent with 40 C.F.R. §§ 124.6 and 124.17.
12. Nothing in this MOA waives EPA's right to object to a proposed permit (in the case of Tier III applications) or a final permit to be issued, even if EPA did not object to the draft permit, consistent with the procedures described in 40 C.F.R. § 123.44.
13. If review of a proposed permit (in the case of Tier III applications) or a final permit to be issued is not triggered, ODAFF shall transmit an electronic copy of the final issued permit, fact sheet, and response to comments to EPA in accordance with 40 C.F.R. § 123.43(a)(3) no later than thirty (30) days after final issuance of a permit.

#### E. REQUEST TO REVIEW NOI BY EPA

EPA may request to review any applicant's NOI to be covered under a general permit. Within five (5) days of EPA's written request, ODAFF shall provide to EPA a copy of the NOI along with a copy of the facility's NMP if the requested NOI is for coverage under a CAFO general permit. When requesting a CAFO's NOI, EPA may also request a copy of any draft terms of the NMP to be incorporated into the general permit for that CAFO. Within thirty (30) days after receipt of the NOI, and NMP if applicable, EPA shall notify ODAFF of any objection to the applicant's suitability for coverage under the general permit. EPA shall also notify ODAFF of any objection to the terms of the NMP to be incorporated into the CAFO general permit within thirty (30) days after receipt. If EPA concerns are not satisfactorily addressed, ODAFF shall not grant the applicant coverage under the general permit.

#### F. WAIVER OF PERMIT REVIEW BY EPA

1. EPA waives the right to review, object to, or comment on the sufficiency of draft permits and proposed permits that would otherwise be submitted to EPA, and final permits for all discharges or proposed discharges covered by this MOA, except for the following categories of permits:
  - a. Draft and proposed permits for discharges regulated under an individual permit;
  - b. Draft general permits (applicable only to general permits themselves, not to NOIs for coverage under general permits except as explained in Section E, above);
  - c. Draft permits authorizing discharges of pollutants which may affect waters



- running through Indian Country in Oklahoma;
  - d. Discharges which may affect the waters of another state;
  - e. Discharges within any of the twenty one (21) industrial categories listed in Appendix A to Part 122;
  - f. Discharges with a daily average discharge exceeding 0.5 million gallons per day, except non-process wastewater;
  - g. Discharges that may affect endangered species; and
  - h. Discharges which are likely to adversely affect sites listed or eligible for listing in the National Register of Historic Places and cultural properties.
2. With respect to permit modifications, revocations, and reissuance, EPA waives the right to review any permit for which EPA has waived its right to review the original permit, unless the modification would put the permit into one of the categories above.
  3. EPA reserves the right to terminate the waivers in this section, in whole or in part, at any time. EPA shall terminate any waiver in writing to ODAFF.
  4. EPA does not waive its right to receive copies of all final permits or any notices required under Section VII. of this MOA, including those for which it has waived review. EPA also does not waive its right to petition ODAFF for review of any action or inaction. The foregoing waivers do not apply to permits that do not comply with applicable provisions of federal laws, federal regulations, federal effluent guidelines, Oklahoma statutes or Oklahoma rules.

#### G. PUBLIC PARTICIPATION

The public notification provided in the permit process shall be consistent with state rules, with 40 C.F.R. Part 25 and §§ 124.8, 124.10 and 124.12 and with the CAFO specific public notice and hearing requirements found in 40 C.F.R. §§ 122.23(h) and 122.42(e)(6). All AgPDES permits will be publicly noticed in a manner constituting legal notice to the public under State law, in accordance with 40 C.F.R. § 124.10(c)(3).

1. ODAFF will make available to the public all permit applications, public notices, preliminary draft permits, draft permits, fact sheets or statements of basis, proposed permits, final permits, effluent data, inspection reports and other documents pertaining to the AgPDES program (except information determined to be confidential in accordance with 40 C.F.R. Part 2 or analogous State law). ODAFF shall provide copies of such information to any person upon request and upon payment of applicable state duplicating fees.
2. ODAFF will develop all fact sheets or statement of basis in accordance with state rules and federal regulations (40 C.F.R. § 124.7, § 124.8, and § 124.56). Public notices shall be developed and distributed in accordance with state rules and 40 C.F.R. § 124.10 in addition to any CAFO specific notice requirements found in 40 C.F.R. § 122.23(h) and 40 C.F.R. § 122.42(e)(6).

3. The public will be allowed at least thirty (30) days to comment on draft permits and will be notified via a public notice that a draft permit is available for review and comment. In instances where ODAFF determines that a public hearing is appropriate, public notice will be given at least thirty (30) days prior to the hearing.
4. ODAFF will develop an electronic mailing list by which information regarding AgPDES permitting activities will be distributed electronically to interested parties upon request. The list shall include U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the State Historic Preservation Office, Oklahoma Department of Environmental Quality, Oklahoma Department of Wildlife Conservation, agricultural related entities or trade organizations, environmental organizations, affected Indian tribes (including any Indian tribe that submits a written request for automatic inclusion, which shall include the tribal contact's electronic mailing address), affected states, and any other person who is interested in AgPDES activities. ODAFF shall provide copies of such information to any person upon request and upon payment of applicable state duplicating fees.
5. The public notice and comment procedures required by 40 C.F.R. § 122.62 and incorporated by reference by ODAFF will be followed with respect to all permit modifications to final issued permits. In the event the State initiates a minor permit modification, the State will transmit the final minor modification to EPA, the applicant, and all persons who received notice of the permit issuance. Public notice of major modifications will be given in the same manner as for initial permit applications.
6. If ODAFF determines that an NMP must be revised prior to granting coverage, applicants must submit a revised NMP to ODAFF for review and approval before the authorization can be issued.
7. ODAFF shall post final permits on its web page for a period of at least three months from the date of permit issuance. Within two weeks from the date of posting, ODAFF will notify persons who commented on the draft permit during the public review period, or who requested notification of ODAFF's final action, of such issuance.
8. ODAFF shall provide an opportunity for judicial review in state court of the final approval or denial of a permit that is sufficient to provide for, encourage, and assist public participation in the permitting process in accordance with 40 C.F.R. § 123.30.
9. ODAFF shall hold public hearings in accordance with 40 C.F.R. § 124.12 and shall inform EPA via written correspondence of a scheduled public hearing within one week of scheduling the hearing.
10. ODAFF shall provide paper copies of notices, draft permits, reports, records etc. Per the Oklahoma Open Records Act, the public may request copies of these documents, except those considered as business confidential, and pay the applicable state

duplicating fee for such service, currently at \$0.25 per page.

#### H. OTHER FEDERAL, STATE AND TRIBAL NOTICE

ODAFF shall provide notice by emailing at the following stages in the permitting process to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the State Historic Preservation Office, Oklahoma Department of Environmental Quality, Oklahoma Department of Wildlife Conservation, affected Indian tribes (including any Indian tribe that has requested automatic inclusion on the electronic mailing list pursuant to Section IV.G(4) of this MOA), affected states, and any other person who has requested such notice, that the following documents are available on ODAFF's web page:

1. Notice of the draft permit availability on the ODAFF website.
2. Draft permit and fact sheet or statement of basis on the ODAFF website available for review and comment.
3. Proposed permit at the time it is transmitted to the applicant for its five day review period.
4. Final permit when issued.

#### I. ISSUANCE OF PERMITS OR NOTICE TO DENY

1. Issuance: If the final determination is to issue a final permit, the final permit shall be forwarded to the permit applicant, along with a transmittal letter to notify him/her of ODAFF's decision. A copy of the final permit shall be transmitted to EPA in accordance with the schedule contained in Section IV.D. of this MOA.
2. Denial: If the final determination is to deny the permit application, ODAFF shall provide the applicant with a notice of intent to deny and shall provide a copy of the notice to EPA.

#### J. TERMINATION, MODIFICATION, REVOCATION AND REISSUANCE

1. ODAFF shall notify EPA whenever it intends to terminate, make a major modification to, revoke, or reissue an issued AgPDES permit.
2. ODAFF shall transmit to EPA a copy of any draft major modification to a permit or any revocation and subsequent reissuance. ODAFF shall clearly identify the proposed changes. The permit review and reissuance procedures in Section IV.D. shall apply to modifications of any reissued permit, for purposes of this MOA, except for permits that undergo minor modification.

#### K. ADMINISTRATIVE OR JUDICIAL ACTION

1. If an administrative or judicial order affects in any manner the terms of a permit, including any permit for which review has been waived by EPA, or impacts ODAFF's ability to implement the AgPDES program in accordance with federal regulations, ODAFF shall transmit within fifteen (15) days to EPA a copy of the order and any affected permit with any changes identified. The permit review and reissuance procedures in Section IV. D. shall apply to modifications under this section.
2. ODAFF shall notify EPA when it makes a determination to stay a permit in whole or in part.

#### L. MAJOR DISCHARGER LIST

There shall be included as a part of the annual program plan a "major discharger" list. Major dischargers shall include those dischargers mutually defined by ODAFF and EPA as major dischargers based on a point rating worksheet or any dischargers that in the opinion of ODAFF or EPA have a high potential to violate water quality standards, or have the potential to cause other significant environmental problems.

#### M. VARIANCES

Variances shall be processed in accordance with the requirements of 40 C.F.R. § 124.62, incorporated by reference at OAC § 35:44-1-2(a)(3)(P). For those variances requiring EPA Region 6 or Headquarters consultation and approval, ODAFF shall conduct an initial review, after which ODAFF shall contact EPA Region 6 to discuss the appropriate approval process and anticipated approval timeframe. Any variance granted or denied by ODAFF is subject to EPA objection under 40 C.F.R. § 123.44.

### **SECTION V. COMPLIANCE MONITORING**

ODAFF shall maintain a vigorous program to identify noncompliance and initiate timely, appropriate, and effective action to return the discharger to compliance. ODAFF shall operate a timely and effective compliance monitoring system whereby ODAFF enters required data to the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, in batch uploads at least every fourteen (14) days, or manually enters data within fourteen (14) days of receipt of the data or an event occurrence.

For purposes of this MOA, "compliance monitoring" refers to all efforts to ensure full compliance with AgPDES permit conditions and the AgPDES program requirements. Compliance monitoring shall include reviewing reports and files, responding to complaints, and conducting inspections and follow ups. ODAFF shall undertake all compliance monitoring activities in a manner that assures compliance with applicable laws, permit terms and conditions, and that will, if necessary, lead to timely, appropriate and effective formal enforcement.

#### A. COMPLIANCE TRACKING

1. In accordance with the AgPDES Program Description, this MOA, and as required in 40 C.F.R. § 123.26, ODAFF shall operate a compliance tracking system so ODAFF staff can determine whether:
  - a. The permittee submitted self monitoring reports required by a permit are received at ODAFF on time; for those reports required to be submitted at a frequency of less than thirty (30) days, a special follow up list will be established in order to track them separately;
  - b. The permittee submitted reports are accurate and complete; and
  - c. The permittee is in full compliance with all permit conditions.
2. ODAFF shall require permittees to use EPA approved Discharge Monitoring Report (DMR) formats for AgPDES facilities reporting monthly discharges.
3. ODAFF shall track the submittal of all reports for date related permit conditions or other reporting schedules as required by the permit or administrative or judicial orders electronically in EPA's national permit/compliance/enforcement tracking system, currently ICIS-NPDES. ODAFF will also track report submittals using its own system.
4. ODAFF will enter the reported data into EPA's national permit/compliance/enforcement tracking system, currently ICIS-NPDES, for all permittees within thirty (30) days of receipt of a permittee's submittal; except those required to submit at a frequency of less than thirty (30) days.
5. ODAFF's response to non-receipt or denial of any required submittal under this section shall be consistent with the time frames in the regulations and the EMS, such that failure to provide required submittals within thirty (30) days of the required date, or unacceptable submittals without subsequent acceptable revisions provided within thirty (30) days of the required date are instances of noncompliance.
6. ODAFF shall prepare and submit the Quarterly Non-Compliance Report (QNCR) within the required time frames as outlined in the NPDES regulations found at 40 C.F.R. § 123.45 and national guidance. ODAFF shall prepare the QNCR automatically by using any compliance data that is entered into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, at regularly scheduled intervals according to established procedures.
7. EPA and ODAFF shall verify the accuracy and completeness of both the QNCR and the data in the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, at periodic intervals.

#### B. COMPLIANCE REVIEW

1. ODAFF shall conduct timely and substantive review of, and shall maintain complete records of, all written material relating to the compliance status of AgPDES facilities including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, annual reports, enforcement documents and any other reports that facilities may be required to submit under the terms and conditions of an AgPDES permit, state administrative actions or state court orders.
2. ODAFF shall conduct a timely and substantive review of all self monitoring reports received, date related permit conditions, and results of a site inspections, if conducted, to evaluate the permittee's compliance status. This evaluation shall be uniform and consistent and shall take into account the frequency, severity, circumstances and analytical error to determine the appropriate enforcement response to noncompliance.
3. ODAFF shall ensure that AgPDES permit limitations and permittee self monitoring compliance data are entered into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, within thirty (30) days of the date of permit issuance.

#### C. FACILITY COMPLIANCE INSPECTIONS

For the purposes of this MOA, a "compliance inspection" may include compliance evaluation, compliance sampling, performance audit, records review, diagnostic, reconnaissance, and follow up for any discharge subject to the approved AgPDES program, whether permitted or unpermitted. The different types of compliance inspections are described in the AgPDES Program Description and shall be conducted in accordance with the EPA Publication No. EPA 305-X-04-001, dated 2004 and titled *NPDES Compliance Inspection Manual* or any subsequent revisions thereto.

1. General Inspection Procedures
  - a. At least annually, typically during the first quarter of the fiscal year, ODAFF and EPA shall define the number of compliance audits and inspections to be undertaken by ODAFF. The targets may be modified when appropriate.
  - b. Either EPA or ODAFF may determine that additional inspections are necessary to assess compliance with issued permits or to respond to national initiatives. Inspections may be performed by EPA only, ODAFF only, or jointly. EPA retains the right to perform inspections at any time but will typically notify ODAFF to give it an opportunity to participate.
  - c. Where the results of an ODAFF initiated inspection indicate that the discharger is in violation, ODAFF shall initiate enforcement action within thirty (30) days of the date of the inspection or make a written or computerized record reflecting ODAFF's preliminary determination to

postpone or forego all or specific types of enforcement actions or to otherwise exercise ODAFF's enforcement discretions.

2. Reporting

- a. ODAFF shall forward to EPA copies of any AgPDES inspection reports upon request within thirty (30) days. When EPA solely conducts an inspection on an AgPDES facility, EPA will provide results of its inspections to ODAFF informally but will provide a written report at ODAFF's request.
- b. ODAFF shall update the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, with inspection and enforcement results for inspections ODAFF conducts.
- c. EPA shall enter inspection and enforcement information into the EPA national permit/compliance/enforcement tracking system, currently ICIS-NPDES, for activities it conducts.
- d. EPA and ODAFF agree that inspection schedules are enforcement confidential. Both Agencies agree to maintain their confidentiality using available legal authorities to inform each other of any requests for disclosure, and to coordinate with each other in responding to any such request. EPA and ODAFF retain the right to withhold its respective inspection schedules in the event of any disclosure.

3. Miscellaneous Compliance Activities

- a. Citizen complaint and follow up
  - i. ODAFF shall establish and maintain a system to receive, evaluate and track information submitted by the public about alleged AgPDES program violations. The system will be either a physical or electronic record detailing the initial contact, assignment, investigation, and final disposition of AgPDES related complaints received from the public. This record shall be made available to EPA and the public pursuant to applicable state and federal law. Complaints received by ODAFF under anonymity or confidentiality shall be handled in accordance to the ODAFF's AEMS Complaint Protocol.
  - ii. Public complaints received by EPA shall be referred to ODAFF when appropriate. If EPA receives either an anonymous or confidential public complaint, EPA shall refer to ODAFF only those portions of the complaint that are releasable. EPA and ODAFF shall closely coordinate follow up of such complaints.
- b. Should EPA or ODAFF receive information regarding any discharge that may endanger human health or the environment, that information shall immediately be shared with the other party via a telephone call at least within twenty four (24) hours of receipt of the violation report.

## **SECTION VI. ENFORCEMENT**

### **A. GENERAL**

ODAFF shall maintain a vigorous enforcement program. ODAFF shall perform a compliance assessment of all facilities and activities subject to the approved AgPDES program and shall take timely and appropriate enforcement actions for violations of program requirements. Citizens' complaints and unauthorized discharges endangering public health shall receive immediate and paramount attention.

### **B. TIMELY ENFORCEMENT RESPONSIBILITY**

1. Consistent with ODAFF's Enforcement Management System, ODAFF shall be responsible, subject to EPA's oversight and enforcement authority, for taking timely and appropriate enforcement action against: 1) persons in violation of compliance schedules, effluent limitations, any permit condition, or any AgPDES program requirement, and 2) persons discharging without a permit. ODAFF understands and agrees to follow the principles outlined in applicable EPA CWA penalty policies and any future revisions of these policies.
2. For violations which endanger public health or the environment, ODAFF shall immediately seek injunctive relief or shall take other appropriate enforcement action which will ensure the immediate correction of the violation.

### **C. ENFORCEMENT PROCEDURES**

1. ODAFF shall implement the enforcement procedures described in this MOA, the Program Description, Enforcement Management System, and in appropriate federal and state statutes, regulations, rules, and policies. Such procedures shall include, but are not limited to, procedures for:
  - a. Tracking the timeliness of permittee submissions and compliance with compliance schedules.
  - b. Screening of compliance data and the application of Technical Review Criteria (TRC) to determine Significant Noncompliance (SNC).
  - c. Reviewing all inspection reports to determine what, if any, enforcement action may be necessary.
  - d. Applying initial compliance or escalated formal enforcement within negotiated time frames to address identified violations.
  - e. Providing copies of enforcement follow up records to EPA for violations that occur or occurred within the first five (5) years of implementation of the AgPDES program, and thereafter, upon EPA's request.
  - f. Maintaining a chronological summary of all violations in a Violation Summary Log. ODAFF will screen all permittee submittals to determine the level and frequency of all violations and will evaluate instances of noncompliance by all permittees.



- g. Tracking for the QNCR all violations and categorizing them for reporting purposes.
  - h. Receiving and ensuring proper consideration of information about alleged violations that are submitted either orally or in writing by the public.
2. ODAFF shall prepare and submit to EPA Region 6 all reports required by 40 C.F.R. § 123.45, as well as any additional information required to be tracked in ICIS-NPDES. EPA will, in turn, submit all information required by 40 C.F.R. § 123.45 to EPA Headquarters. As a direct user of ICIS-NPDES, ODAFF shall comply with the ICIS-NPDES Policy Statement. ODAFF shall keep EPA informed, through mutually agreed upon procedures, of the compliance status of facilities, enforcement activities completed and court cases filed.

#### D. TRANSFER OF ENFORCEMENT AUTHORITY

Within forty five (45) days of permittee compliance with the EPA action or ODAFF finalized equivalent administrative order, the EPA action which constrained the transfer of enforcement responsibilities shall be closed and the file and primary enforcement lead shall be transferred to ODAFF. The ODAFF shall assume primary enforcement lead with respect to all facilities and activities subject to the AgPDES program within two (2) years of program approval in accordance with the previously described procedures, except for those facilities in which an EPA administrative fine or EPA civil referral is pending.

#### E. EPA'S OVERSIGHT AND ENFORCEMENT AUTHORITY

1. The provisions of this MOA in no way restrict or limit EPA's oversight and enforcement authority under the Clean Water Act.
2. Any discussion of EPA or ODAFF roles and responsibilities is intended to guide EPA and ODAFF personnel in carrying out an effective partnership, but is not meant to make ODAFF the EPA's agent for purposes of enforcement.
3. In particular, if the EPA determines that ODAFF has not taken timely enforcement action against a violator or that ODAFF's action has not been appropriate, the EPA may proceed with any or all enforcement options available to it under Section 309 of the CWA. EPA generally will not proceed with federal civil enforcement until the ODAFF has been given at least a thirty (30) day notice to take appropriate enforcement action. Such notification will be made through a written communication to the Commissioner of ODAFF. Notification generally will not be provided when EPA is exercising its emergency power under Section 504 of the CWA. The EPA may determine that ODAFF has failed to take appropriate enforcement action, including but not limited to when ODAFF has failed to seek or impose, where appropriate, penalties in amounts which the EPA believes to be substantially adequate in comparison to the amounts which the EPA would require under similar facts.
4. ODAFF may request that EPA initiate federal enforcement action at any time.

## F. PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS

In accordance with 40 C.F.R. § 123.27(d)(1) and 2 O.S. § 2A-9(C), ODAFF shall provide for public participation in the State enforcement process by allowing intervention as of right in any civil or administrative action to obtain remedies specified under 40 C.F.R. § 123.27(a)(1), (2) or (3) by any citizen having an interest which is or may be adversely affected.

## **SECTION VII. PROGRAM REVIEW AND REVISION**

### A. EPA REVIEW OF AgPDES PROGRAM

ODAFF and EPA are responsible for assuring that the AgPDES program is consistent with all requirements within this MOA, the Clean Water Act, 40 C.F.R. Parts 123 -125 and EPA policy and guidance. It is the intent of EPA and ODAFF to work cooperatively to assure that the AgPDES program is consistent with these requirements and to rectify any problems. To fulfill this responsibility:

1. EPA may request ODAFF to submit permits, reports, and enforcement actions for EPA review.
2. EPA may request ODAFF to submit AgPDES permitted CAFO available data including, but not limited to, the name, location, permit status, animal numbers, animal type(s), acreage for land application, and any additional facility-specific data elements tracked by ODAFF, for EPA review.
3. EPA may audit, in detail, ODAFF files and documentation for selected facilities to determine whether:
  - a. Permits are processed and issued consistently with federal requirements;
  - b. Capability exists to discover permit violations when they occur;
  - c. ODAFF's compliance reviews are timely;
  - d. ODAFF's selection and resolution of enforcement actions are appropriate;
  - e. ODAFF's enforcement actions are both timely and effective;
  - f. ODAFF's public participation policies, practices and procedures are satisfactory; and
  - g. ODAFF's penalties assessed are appropriate and consistent with requirements of the Clean Water Act and federal regulations.
4. EPA may also consider comments from permittees, the public, and federal and local agencies concerning the ODAFF's administration of AgPDES. Any such comments considered by EPA shall be brought to the attention of ODAFF by written correspondence if the commenting party has not previously communicated its comment to ODAFF. If the information has been submitted to ODAFF under a claim

of confidentiality, ODAFF will inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 C.F.R. Part 2, Subpart B, and 40 C.F.R. § 122.7.

5. EPA shall meet with ODAFF officials to review ODAFF's data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures at a frequency to be determined by EPA.
6. EPA shall notify ODAFF thirty (30) days in advance of any program review so that the appropriate ODAFF officials may be available to discuss with EPA individual circumstances and problems.
7. EPA shall transmit a copy of the draft audit report to ODAFF for ODAFF's review and comment prior to EPA's issuing a final audit report.

**B. REVIEW OF NEW OR REVISED STATE RULES OR STATUTES**

1. ODAFF shall keep EPA fully informed of any proposed legislative or judicial action which acts to amend, rescind or repeal any part of ODAFF's authority to administer the AgPDES program or which may affect its ability to implement the AgPDES program. ODAFF shall monitor bills proposed in the Oklahoma Legislature and shall promptly notify EPA as soon as ODAFF becomes aware of any legislative action which proposes to repeal or enact any statute affecting the implementation of the AgPDES program as well as any changes to rules, directives or policies, including the state water quality standards. Notification under this paragraph shall be given to the EPA Region 6 Office of Regional Counsel. EPA reserves the right to initiate procedures to withdraw the AgPDES program if the Oklahoma Legislature enacts any legislation rendering the AgPDES program less stringent than the CWA or its regulations require. ODAFF shall notify EPA prior to taking any action to:
  - a. Propose or affect any substantial amendment, rescission or repeal of any statute, rule, directive or policy which has been approved by EPA in conjunction with the AgPDES program authorization,
  - b. Propose or enact any statute, regulation, rule, directive or policy which affects the implementation of the AgPDES program, including water quality standards,
  - c. Establish or revise State Technical Standards, or
  - d. Modify program authorization documents.
2. If an amendment, rescission or repeal of any statute, rule, directive or policy described above occurs for any reason, including action of the Oklahoma Legislature or a court, ODAFF shall, within ten (10) days of such event, notify and transmit a copy of the text of such revision to the EPA Regional Administrator.
3. If there are revisions to the Clean Water Act and the regulations which implement it, ODAFF shall seek any amendments to its statutes, rules or program authorization necessary to preserve and maintain compliance with NPDES program requirements

within the shortest possible time frame, but in no event longer than the time frames set out in 40 C.F.R. § 123.62(e). ODAFF and EPA shall discuss the status and schedule of necessary revisions to the AgPDES program that are required as a result of any changes to the CWA and the regulations promulgated thereunder, as well as related guidance documents.

### C. PROGRAM REVISION

Consistent with 40 C.F.R. § 123.62, either EPA or ODAFF may initiate a revision to the AgPDES program at any time. Whenever the Commissioner has reason to believe that circumstances have changed with respect to ODAFF's program, revisions to the MOA shall be accomplished as follows:

1. ODAFF shall submit to EPA's Regional Administrator a modified program description, a Statement of Legal Authority (Attorney General's Statement), Memorandum of Agreement, or any such other documents necessary under the circumstances. EPA Region 6, with concurrence of EPA Headquarters, will determine if the proposed revision is substantial or non-substantial.
2. If the proposed revision is determined to be substantial, EPA shall issue a public notice of the proposed revision and provide an opportunity for the public to comment for a period of at least thirty (30) days. The public notice will also provide an opportunity for the public to request a public hearing.
3. After consideration of any public comments, the Regional Administrator, with the concurrence of EPA Headquarters, will approve or disapprove program revisions based on the requirements of 40 C.F.R. Part 123 and the CWA. Notice of approval of a substantial change shall be published in the *Federal Register*. A program revision shall become effective upon the approval of the Regional Administrator.
4. If EPA determines the revision to be non-substantial, notice of approval may be given by letter from the Regional Administrator to the Governor or designee.
5. In order to conform with new or revised promulgations of federal regulations, the State will revise its program within one year of promulgation of the new or revised federal regulations, unless the State must amend or enact a statute to make the required revision or if a State legislative process must be completed, in which case such revision shall take place within two (2) years. [See 40 C.F.R. § 123.62(e)].
6. ODAFF will provide proposed revisions to EPA in consideration of the date the State needs to have EPA's review completed. After conducting a preliminary review of ODAFF's proposed revision, EPA will provide to ODAFF an estimated schedule for completing its review. The estimated review schedule will depend on the complexity of the proposed revision. EPA will, thereafter, provide ODAFF with quarterly updates, as appropriate, regarding the status of its review.

7. ODAFF will notify EPA whenever it proposes to transfer all or any part of any program from ODAFF to any other State agency, and will identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until given approval by the Regional Administrator under 40 C.F.R. § 123.62(b) and (c).
8. Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to ODAFF's program, he may request, and ODAFF shall provide, a supplemental Statement of Legal Authority (Attorney General's Statement), program description, or other documents or information as are necessary.
9. EPA may initiate withdrawal proceedings under 40 C.F.R. § 123.64 on its own initiative or in response to a petition from an interested person alleging failure of ODAFF to comply with the requirements of 40 C.F.R. Part 123, as set forth in 40 C.F.R. § 123.63. EPA shall notify ODAFF in writing of any inconsistencies or other deficiencies prior to the initiation of withdrawal proceedings. ODAFF shall respond in writing within thirty (30) days. EPA shall notify ODAFF in writing whether noted inconsistencies or deficiencies have been rectified. If the inconsistencies or deficiencies have not been corrected, EPA may proceed with withdrawal proceedings pursuant to 40 C.F.R. § 123.64.

## **SECTION VIII. INDEPENDENT POWERS AND RIGHTS**

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to any applicable federal laws or regulations of the CWA. This MOA is for the administrative convenience of EPA and ODAFF and does not apply to nor confer any rights or benefit, substantive or procedural, enforceable by law or equity on any person not a party to this MOA against ODAFF or EPA, their officers or employees, or any other person. This MOA does not constitute or create any rights or valid defenses to regulated parties in violation of an environmental statute, regulation or permit, including, without limitation, any defense to an enforcement action taken by ODAFF. This MOA does not authorize ODAFF to take any action that is less stringent than or inconsistent with the Clean Water Act. Nothing in this MOA establishes an agency relationship or privity between EPA and ODAFF. No waiver or sovereign immunity is implied or assumed in this MOA.

## **SECTION IX. INCORPORATION BY REFERENCE**

Whenever ODAFF is required to adopt federal standards or requirements, it may do so by reference. Unless permissible under state law, ODAFF shall not prospectively incorporate regulations by reference.

## **SECTION X. COMPUTATION OF TIME**

In computing any period of time prescribed by this MOA, the day from which the designated period of time begins to run shall not be included. The last day of the period

shall be included unless it is a Saturday, Sunday or state or federal legal holiday, in which case the period extends until the next day which is not a Saturday, Sunday or state or federal legal holiday.

#### **SECTION XI. MODIFICATION OF THIS MOA**


The Regional Administrator and the Commissioner shall review and revise this MOA as necessary. At any time upon determination by either the Regional Administrator or the Commissioner that a revision to this MOA is warranted both parties shall jointly review and revise the MOA as appropriate. Before this MOA may be modified, proposed amendments or revisions must be put in writing and signed by the Commissioner or Regional Administrator. All modifications shall be made in accordance with 40 C.F.R. § 123.62. If the Regional Administrator determines that any modification to the MOA initiated by the ODAFF does not conform to the requirements of Section 402 (33 U.S.C. § 1342), or the requirements of 40 C.F.R. Parts 122-125 or any other applicable federal regulation, or the National Program Guidance, the Regional Administrator shall notify the ODAFF in writing of any required proposed revision or modifications which must be in the MOA.

#### **SECTION XII. MOA EFFECTIVE DATE**

This Memorandum of Agreement shall become effective when approved by both the EPA Regional Administrator pursuant to 40 C.F.R. § 123.24(a) and the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry.


In witness whereof, the parties execute this MOA.

**FOR OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY:**

  
\_\_\_\_\_  
Jim Reese  
Commissioner of Agriculture

12-20-12  
Date

**FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_  
Regional Administrator, Region 6

12/20/12  
Date

## Open Records Act

### §51-24A.1. Short title.

Section 24A.1 et seq. of this title shall be known and may be cited as the "Oklahoma Open Records Act".

Added by Laws 1985, c. 355, § 1, eff. Nov. 1, 1985. Amended by Laws 1988, c. 68, § 1, eff. Nov. 1, 1988; Laws 1988, c. 187, § 1, emerg. eff. June 6, 1988; Laws 1996, c. 247, § 41, eff. July 1, 1996; Laws 1997, c. 2, § 10, emerg. eff. Feb. 26, 1997.

NOTE: Laws 1996, c. 209, § 1 repealed by Laws 1997, c. 2, § 26, emerg. eff. Feb. 26, 1997.

### §51-24A.2. Public policy - Purpose of act.

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

Added by Laws 1985, c. 355, § 2, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 2, emerg. eff. June 6, 1988.

### §51-24A.3. Definitions.

As used in this act:

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean:

- a. computer software,
- b. nongovernment personal effects,
- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,
- d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body,

- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
  - f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park,
  - g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act, or
  - h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,
    - (1) any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes,
    - (2) personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or
    - (3) audio or video recordings of the Department of Public Safety;
2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators;
3. "Public office" means the physical location where public bodies conduct business or keep records;
4. "Public official" means any official or employee of any public body as defined herein; and
5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation. Added by Laws 1985, c. 355, § 3, eff. Nov. 1, 1985. Amended by Laws 1987, c. 222, § 117, operative July 1, 1987; Laws 1988, c. 187, § 3, emerg. eff. June 6, 1988; Laws 1993, c. 39, § 1, eff. Sept. 1, 1993; Laws 1996, c. 209, § 2, eff. Nov. 1, 1996; Laws 1998, c. 315, § 4, emerg. eff. May 28, 1998; Laws 1998, c. 368, § 11, eff. July 1, 1998; Laws 2001, c. 355, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 478, § 2, eff. July 1, 2002; Laws 2003, c. 3, § 42, emerg. eff. March 19, 2003; Laws 2004, c. 328, § 1, eff. July 1, 2004; Laws 2005, c. 199, § 4, eff. Nov. 1, 2005.
- NOTE: Laws 2002, c. 293, § 3 repealed by Laws 2003, c. 3, § 43, emerg. eff. March 19, 2003.

#### §51-24A.4. Record of receipts and expenditures.

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.

Added by Laws 1985, c. 355, § 4, eff. Nov. 1, 1985.

#### §51-24A.5. Inspection, copying and/or mechanical reproduction of records - Exemptions.

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:



1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,
- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,
- c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

- a. is solely for commercial purpose, or
  - b. would clearly cause excessive disruption of the essential functions of the public body,
- then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the

provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

Added by Laws 1985, c. 355, § 5, eff. Nov. 1, 1985. Amended by Laws 1986, c. 213, § 1, emerg. eff. June 6, 1986; Laws 1986, c. 279, § 29, operative July 1, 1986; Laws 1988, c. 187, § 4, emerg. eff. June 6, 1988; Laws 1992, c. 231, § 2, emerg. eff. May 19, 1992; Laws 1993, c. 97, § 7, eff. Sept. 1, 1993; Laws 1996, c. 209, § 3, eff. Nov. 1, 1996; Laws 2000, c. 342, § 8, eff. July 1, 2000; Laws 2001, c. 137, § 1, emerg. eff. April 24, 2001; Laws 2005, c. 199, § 5, eff. Nov. 1, 2005; Laws 2006, c. 16, § 34, emerg. eff. March 29, 2006.

NOTE: Laws 2005, c. 223, § 1 repealed by Laws 2006, c. 16, § 35, emerg. eff. March 29, 2006.

§51-24A.6. Public body maintaining less than 30 hours of regular business per week - Inspection, copying or mechanical reproduction of records.

A. If a public body or its office does not have regular business hours of at least thirty (30) hours a week, the public body shall post and maintain a written notice at its principal office and with the county clerk where the public body is located which notice shall:

1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;
2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and
3. Describe in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday.

B. The person requesting the record and the person authorized to release the records of the public body may agree to inspection, copying, or mechanical reproduction on a day and at a time other than that designated in the notice.

Added by Laws 1985, c. 355, § 6, eff. Nov. 1, 1985.

§51-24A.7. Personnel records - Confidentiality - Inspection and copying.

A. A public body may keep personnel records confidential:

1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to, records of:

1. An employment application of a person who becomes a public official;
2. The gross receipts of public funds;
3. The dates of employment, title or position; and
4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

C. Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.

D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

Added by Laws 1985, c. 355, § 7, eff. Nov. 1, 1985. Amended by Laws 1990, c. 257, § 6, emerg. eff. May 23, 1990; Laws 1994, c. 177, § 1, eff. Sept. 1, 1994; Laws 2005, c. 116, § 2, eff. Nov. 1, 2005.

#### §51-24A.8. Law enforcement records - Disclosure.

A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
3. A chronological list of all incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred;
4. Radio logs, including a chronological listing of the calls dispatched;
5. Conviction information, including the name of any person convicted of a criminal offense;
6. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;
7. A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number; and
8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.

B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department.

E. The Council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:

1. To verify the current certification status of any peace officer;
2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;
3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;
4. To provide, upon written request, to any law enforcement agency conducting an official investigation, copies of the records of any peace officer who is the subject of such investigation;
5. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and

6. Pursuant to an order of the district court of the State of Oklahoma.

F. The Department of Public Safety shall keep confidential:

1. All records it maintains pursuant to its authority under Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to:

- a. training, lesson plans, teaching materials, tests, and test results,
- b. policies, procedures, and operations, any of which are of a tactical nature, and
- c. the following information from radio logs:
  - (1) telephone numbers,
  - (2) addresses other than the location of incidents to which officers are dispatched, and
  - (3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; and

2. For the purpose of preventing identity theft and invasion of law enforcement computer systems, except as provided in Title 47 of the Oklahoma Statutes, all driving records.

Added by Laws 1985, c. 355, § 8, eff. Nov. 1, 1985. Amended by Laws 1989, c. 212, § 8, eff. Nov. 1, 1989; Laws 2000, c. 349, § 2, eff. Nov. 1, 2000; Laws 2001, c. 5, § 29, emerg. eff. March 21, 2001; Laws 2005, c. 199, § 6, eff. Nov. 1, 2005; Laws 2006, c. 16, § 36, emerg. eff. March 29, 2006; Laws 2009, c. 36, § 1, eff. Nov. 1, 2009.

NOTE: Laws 2000, c. 226, § 1 repealed by Laws 2001, c. 5, § 30, emerg. eff. March 21, 2001. Laws 2005, c. 35, § 1 repealed by Laws 2006, c. 16, § 37, emerg. eff. March 29, 2006.

§51-24A.9. Personal notes and personally created material - Confidentiality.

Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project.

Added by Laws 1985, c. 355, § 9, eff. Nov. 1, 1985.

§51-24A.10. Voluntarily supplied information - Records providing unfair competitive advantage - Department of Commerce, Department of Career and Technology Education, technology center school districts, and Oklahoma Film and Music Office records - Public utility records - Confidentiality - Disclosure.

A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from June 6, 1988, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, any information voluntarily supplied shall be subject to full disclosure pursuant to this act.

B. If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:

- 1. Bid specifications for competitive bidding prior to publication by the public body; or
- 2. Contents of sealed bids prior to the opening of bids by a public body; or
- 3. Computer programs or software but not data thereon; or
- 4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract; or
- 5. The prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses.

C. Except as set forth hereafter, the Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office may keep confidential:

1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice, business development or customized training from such Departments or school districts;
2. Proprietary information of the business submitted to the Department or school districts for the purpose of business development or customized training, and related confidentiality agreements detailing the information or records designated as confidential; and
3. Information compiled by such Departments or school districts in response to those submissions.

The Oklahoma Department of Commerce, the Oklahoma Department of Career and Technology Education, the technology center school districts, and the Oklahoma Film and Music Office may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.

D. Although they must provide public access to their records, including records of the address, rate paid for services, charges, consumption rates, adjustments to the bill, reasons for adjustment, the name of the person that authorized the adjustment, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, social security numbers, bank account information for individual customers, and utility supply and utility equipment supply contracts for any industrial customer with a connected electric load in excess of two thousand five hundred (2,500) kilowatts if public access to such contracts would give an unfair advantage to competitors of the customer; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of this act.

Added by Laws 1985, c. 355, § 10, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 5, emerg. eff. June 6, 1988; Laws 1996, c. 209, § 4, eff. Nov. 1, 1996; Laws 2004, c. 186, § 1, emerg. eff. May 3, 2004; Laws 2006, c. 18, § 1, eff. Nov. 1, 2006; Laws 2007, c. 6, § 1, eff. Nov. 1, 2007; Laws 2008, c. 284, § 1, eff. Nov. 1, 2008; Laws 2009, c. 158, § 1, eff. Nov. 1, 2009; Laws 2010, c. 161, § 1.

§51-24A.10a. Oklahoma Medical Center - Market research and marketing plans - Confidentiality.

The Oklahoma Medical Center may keep confidential market research conducted by and marketing plans developed by the Oklahoma Medical Center if the Center determines that disclosure of such research or plans would give an unfair advantage to competitors of the Oklahoma Medical Center regarding marketing research and planning, public education, and advertising and promotion of special and general services provided by the Oklahoma Medical Center.

Added by Laws 1988, c. 266, § 22, operative July 1, 1988.

§51-24A.11. Library, archive or museum materials - Confidentiality.

A. A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation and any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes.

B. If library, archive, or museum materials are donated to a public body and the donation may be claimed as a tax deduction, the public body may keep confidential any information required as a condition of the donation except the date of the donation, the appraised value claimed for the donation, and a general description of the materials donated and their quantity.

Added by Laws 1985, c. 355, § 11, eff. Nov. 1, 1985. Amended by Laws 1992, c. 231, § 3, emerg. eff. May 19, 1992.

§51-24A.12. Litigation files and investigatory files of Attorney General, district or municipal attorney - Confidentiality.

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

Added by Laws 1985, c. 355, § 12, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 6, emerg. eff. June 6, 1988.

§51-24A.13. Federal records - Confidentiality.

Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law.

Added by Laws 1985, c. 355, § 13, eff. Nov. 1, 1985.

§51-24A.14. Personal communications relating to exercise of constitutional rights - Confidentiality.

Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.

Added by Laws 1985, c. 355, § 14, eff. Nov. 1, 1985.

§51-24A.15. Crop and livestock reports - Public warehouse financial statements - Confidentiality.

A. The Division of Agricultural Statistics, Oklahoma Department of Agriculture, also known as the Oklahoma Crop and Livestock Reporting Service, may keep confidential crop and livestock reports provided by farmers, ranchers, and agribusinesses to the extent the reports individually identify the providers.

B. The State Board of Agriculture is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Commissioner of Agriculture.

Upon good cause shown, and at the discretion of the Commissioner of Agriculture, such financial statements may be released.

Added by Laws 1985, c. 355, § 15, eff. Nov. 1, 1985. Amended by Laws 1988, c. 259, § 14, emerg. eff. June 29, 1988.

§51-24A.16. Educational records and materials - Confidentiality.

A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:

1. Individual student records;
2. Teacher lesson plans, tests and other teaching material; and
3. Personal communications concerning individual students.

B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "Directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized

activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older.

C. A public school district may release individual student records for the current or previous school year to a school district at which the student was previously enrolled for purposes of evaluating educational programs and school effectiveness.

Added by Laws 1985, c. 355, § 16, eff. Nov. 1, 1985. Amended by Laws 1986, c. 116, § 1, emerg. eff. April 9, 1986; Laws 2003, c. 430, § 1, eff. July 1, 2003.

§51-24A.16a. Higher education – Donor or prospective donor information – Confidentiality.

Institutions or agencies of The Oklahoma State System of Higher Education may keep confidential all information pertaining to donors and prospective donors to or for the benefit of the institutions or agencies.

Added by Laws 2007, c. 170, § 2, emerg. eff. May 31, 2007.

§51-24A.17. Violations - Penalties - Civil liability.

A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment.

B. Any person denied access to records of a public body or public official:

1. May bring a civil suit for declarative or injunctive relief, or both, but such civil suit shall be limited to records requested and denied prior to filing of the civil suit; and
2. If successful, shall be entitled to reasonable attorney fees.

C. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.

D. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act.

Added by Laws 1985, c. 355, § 17, eff. Nov. 1, 1985. Amended by Laws 2005, c. 199, § 7, eff. Nov. 1, 2005.

§51-24A.18. Additional recordkeeping not required.

Except as may be required in Section 24A.4 of this title, this act does not impose any additional recordkeeping requirements on public bodies or public officials.

Added by Laws 1985, c. 355, § 18, eff. Nov. 1, 1985. Amended by Laws 2005, c. 199, § 8, eff. Nov. 1, 2005.

§51-24A.19. Research records - Confidentiality.

In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:

1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not limited to, trade secrets and

commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and

2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology. However, institutions within The Oklahoma State System of Higher Education shall:

a. report to the Oklahoma State Regents for Higher Education as requested, on forms provided by the Regents, research activities funded by external entities or the institutions, the results of which have generated new intellectual property, and

b. report to the Oklahoma State Regents for Higher Education annually on forms provided:

- (1) expenditures for research and development supported by the institution,
- (2) any financial relationships between the institution and private business entities,
- (3) any acquisition of an equity interest by the institution in a private business,
- (4) the receipt of royalty or other income related to the sale of products, processes, or ideas by the institution or a private business entity with which the institution has established a financial arrangement,
- (5) the gains or losses upon the sale or other disposition of equity interests in private business entities, and
- (6) any other information regarding technology transfer required by the Oklahoma State Regents for Higher Education.

The reports required in subparagraphs a and b of this paragraph shall not be deemed confidential and shall be subject to full disclosure pursuant to the Oklahoma Open Records Act.

Added by Laws 1988, c. 68, § 2, eff. Nov. 1, 1988. Amended by Laws 1999, c. 287, § 1, emerg. eff. May 27, 1999.

#### §51-24A.20. Records in litigation or investigation file - Access.

Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.

Added by Laws 1988, c. 187, § 7, emerg. eff. June 6, 1988.

#### §51-24A.21. Increment district reports - Exemption from copying fees.

The fees that may be charged by a public body pursuant to the provisions of paragraph 3 of Section 24A.5 of Title 51 of the Oklahoma Statutes shall not be charged when a state agency or taxing entity located within the boundaries of any district created pursuant to the provisions of the Local Development Act request a copy of the reports required by subsections A and B of Section 18 of this act.

Added by Laws 1992, c. 342, § 21.

#### §51-24A.22. Public utilities - Confidential books, records and trade secrets.

A. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets.



B. As used in this section, "public utility" means any entity regulated by the Corporation Commission, owning or operating for compensation in this state equipment or facilities for:

1. Producing, generating, transmitting, distributing, selling or furnishing electricity;
2. The conveyance, transmission, or reception of communication over a telephone system; or
3. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public.

Added by Laws 1994, c. 315, § 12, eff. July 1, 1994.

§51-24A.23. Department of Wildlife Conservation - Confidentiality of information relating to hunting and fishing licenses.

A. The Department of Wildlife Conservation shall keep confidential the information provided by persons, including the name and address of the person, applying for or holding any permit or license issued by the Department, to the extent the information individually identifies the person. The Department may use the information for Department purposes or allow the United States Fish and Wildlife Service to use the information for survey purposes only. The Department shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. The provisions of subsection A of this section shall not apply to information provided by persons applying for or holding a commercial hunting or fishing license.

Added by Laws 1996, c. 32, § 1, eff. July 1, 1996.

§51-24A.24. Office of Juvenile System Oversight - Confidentiality of investigatory records and notes. Unless otherwise provided by law, the Office of Juvenile System Oversight may keep its investigatory records and notes confidential, unless ordered by a court of competent jurisdiction to disclose the information.

Added by Laws 1996, c. 247, § 42, eff. July 1, 1996.

§51-24A.25. Order of court for removal of materials from public record.

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

Added by Laws 2000, c. 172, § 4, eff. Nov. 1, 2000.

§51-24A.26. Intergovernmental self-insurance pools.

An intergovernmental self-insurance pool may keep confidential proprietary information, such as actuarial reports, underwriting calculations, rating information and records that are created based on conclusions of such information that are developed through the operation of the intergovernmental self-insurance pool.

Added by Laws 2000, c. 226, § 2, eff. Nov. 1, 2000.

NOTE: Editorially renumbered from § 24A.25 of this title to avoid duplication in numbering.

§51-24A.27. Vulnerability assessments of critical assets in water and wastewater systems.

A. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. State environmental agencies or public utilities may use the information for internal purposes or allow the information to be used for survey purposes only. The state environmental agencies or public utilities shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. For purposes of this section:

1. "State environmental agencies" includes the:
    - a. Oklahoma Water Resources Board,
    - b. Oklahoma Corporation Commission,
    - c. State Department of Agriculture,
    - d. Oklahoma Conservation Commission,
    - e. Department of Wildlife Conservation,
    - f. Department of Mines, and
    - g. Department of Environmental Quality;
  2. "Public Utility" means any individual, firm, association, partnership, corporation or any combination thereof, municipal corporations or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:
    - a. producing, generating, transmitting, distributing, selling or furnishing electricity,
    - b. the conveyance, transmission, reception or communications over a telephone system,
    - c. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public, or
    - d. the transportation, delivery or furnishing of water for domestic purposes or for power.
- Added by Laws 2003, c. 166, § 1, emerg. eff. May 5, 2003.

§51-24A.28. Confidential information - Exceptions.

A. The following information may be kept confidential:

1. Investigative evidence of a plan or scheme to commit an act of terrorism;
2. Assessments of the vulnerability of government facilities or public improvements to an act of terrorism and work papers directly related to preparing the assessment of vulnerability;
3. Records including details for deterrence or prevention of or protection from an act or threat of an act of terrorism;
4. Records including details for response or remediation after an act of terrorism;
5. Information technology of a public body or public official but only if the information specifically identifies:
  - a. design or functional schematics that demonstrate the relationship or connections between devices or systems,
  - b. system configuration information,
  - c. security monitoring and response equipment placement and configuration,
  - d. specific location or placement of systems, components or devices,
  - e. system identification numbers, names, or connecting circuits,
  - f. business continuity and disaster planning, or response plans, or
  - g. investigative information directly related to security penetrations or denial of services;
6. Investigation evidence of an act of terrorism that has already been committed;
7. Records received, maintained or generated by the Oklahoma Office of Homeland Security which include confidential private business information or an individual's private records; and
8. Records received by the Oklahoma Office of Homeland Security from the United States Department of Homeland Security or records maintained or generated by the Oklahoma Office of Homeland Security involving the United States Department of Homeland Security.

B. The following information shall not be kept confidential:

1. Records related to federal grants administered by the Oklahoma Office of Homeland Security;
2. Records related to the receipt and expenditure of public funds; or
3. Records related to the financial performance or financial administration of the Oklahoma Office of Homeland Security.

C. For the purposes of this section, the term “terrorism” means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

D. 1. Public educational institutions may keep confidential campus security plans. An institution or agency may in its discretion release information contained in or related to the campus security plan in order to design or implement the plan.

2. Nothing in this subsection shall preclude an institution or agency within The Oklahoma State System of Higher Education from collecting and releasing information relating to campus crime statistics and campus security policies as is required pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f).

3. For purposes of this subsection, “campus security plan” shall include, but is not limited to, prevention and response procedures to and notification procedures for perceived or actual security threats and incidents on or impacting the campus.

Added by Laws 2003, c. 175, § 2, emerg. eff. May 5, 2003. Amended by Laws 2005, c. 399, § 1, emerg. eff. June 6, 2005; Laws 2009, c. 166, § 1, eff. July 1, 2009.

NOTE: Editorially renumbered from Title 51, § 24A.27 to avoid a duplication in numbering.

§51-24A.29. Protective orders for pleadings, other materials - Microfilm records - Procedures - Storing of protected materials - Confidentiality.

A. Unless confidentiality is specifically required by law, any order directing the withholding or removal of pleadings or other material from a public record shall contain:

1. A statement that the court has determined it is necessary in the interests of justice to remove the material from the public record and in those instances where such withholding is required by law, the order shall so indicate;

2. Specific identification of the material which is to be withheld, removed or withdrawn from the public record, or which is to be filed but not placed in the public record; and

3. A requirement that any party seeking to file protected materials place such materials in a sealed manila envelope clearly marked with the caption and case number, the word “CONFIDENTIAL”, and stating the date the order was entered and the name of the judge entering the order.

B. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion, and no other accounting entries may be affected by such order.

C. The party or counsel who has received the protective order shall be responsible for promptly presenting the order to appropriate supervisory court clerk personnel for action.

D. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case.

E. Counsel for the respective parties shall be responsible for informing witnesses and other persons, as necessary, of the contents of the protective order.

F. When a case is filed in which a party intends to seek an order withholding removing material from the public record, the parties shall be initially designated on the petition under a pseudonym such as “John or Jane Doe”, or “Roe”, and the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order withholding or removing the case, in whole or in part from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

G. It shall be the duty of the party filing confidential materials with the court to remove the materials from the custody of the court clerk within sixty (60) days after dismissal or other disposition of the main case in which the materials were filed. If the party fails to remove confidential documents, the court

clerk shall be authorized to destroy without notice such materials after a period of one (1) year has elapsed since the dismissal or other disposition of the main case in which materials were filed.

H. Municipal courts shall keep confidential all personal identifying information of the parties involved in any case in municipal court, except where such information is provided to the Oklahoma Tax Commission for purposes of collection of municipal court fees. The personal identifying information that shall be kept confidential includes the following:

1. Credit card numbers;
2. Social security numbers; and
3. Bank account numbers.

Added by Laws 2005, c. 72, § 1, eff. Nov. 1, 2005. Amended by Laws 2010, c. 193, § 1, eff. Nov. 1, 2010.

## Introduction

The National Pollutant Discharge Elimination System (NPDES) program is the federal wastewater discharge permitting program which came to being as part of the 1972 amendments to the Water Pollution Control Act or Clean Water Act (CWA). The purpose of the NPDES program is to protect human health and the environment and it remains the center of the nation's water pollution control efforts. The CWA requires that all "point sources" discharging "pollutants" into "waters of the United States" must obtain a NPDES permit. NPDES permits contain limits on what can be discharged and have other provisions to ensure that the discharge does not harm water quality or the public's health. Permits are issued by the Environmental Protection Agency (EPA), or in the case of an EPA approved state run program, by a state governmental agency.

A "point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. *See* 40 CFR 122.2.

The term "pollutant" includes any type of industrial, municipal, and agricultural waste discharged into waters of the United States. Some examples include, but are not limited to, dredged soil, incinerator residue, sewage, garbage, oil and grease, pesticides, metals, munitions, chemical waste, solid waste, biological materials, radioactive materials, heat, discarded equipment, rock and sand. It does not include water, gas or other material injected into an oil and gas production well.

The term "waters of the United States" is defined broadly in the CWA and federal regulations. "Waters of the United States" include navigable waters, tributaries to navigable waters, interstate waters and the oceans out to two hundred (200) miles. These waters also include intrastate waters used by interstate travelers for recreation or other purposes or for industrial purposes by industries engaged in interstate commerce.

The EPA is the permitting authority for discharges under ODAFF jurisdiction as described by Section 1-3-101 of Title 27A of the Oklahoma statutes. However, in 1994 the Oklahoma Legislative Session directed the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) to seek authority from the EPA to administer the program.

Therefore, the Oklahoma Legislature passed the language contained in 2 O.S. § 2-18.2, directing ODAFF to seek authorization from EPA to administer any and all NPDES programs for agriculture related point source and nonpoint source discharges. Subsequently, the 2005 Session of the Oklahoma Legislature approved House Bill 1467, which established the two key statutes, the Oklahoma Agriculture Pollutant Discharge Elimination System Act (AgPDES) and the Oklahoma Agriculture Environmental

Permitting Act. To accomplish this goal of partial NPDES program authorization, ODAFF is filing an application to EPA.

As required under the Clean Water Act (CWA) §402(b) and 40 CFR Part 123.22, the Oklahoma Agriculture Pollutant Discharge Elimination System (AgPDES) Program Description specifies how the ODAFF intends to structure and operate this NPDES partial program to ensure the goals of the CWA are attained.

The Program Description is part of a full program submission to the EPA that includes:

- A letter from the Governor of Oklahoma requesting program approval;
- This Program Description that describes the organization, staffing, funding resources and procedures for the ODAFF to carry out its responsibilities;
- A Memorandum of Agreement (MOA) that describes the transfer from EPA to the ODAFF administration of permitting and compliance of specified permits, identifies the draft permits that EPA will review, comment, and where applicable object, specifies the frequency and contents of information ODAFF is required to submit to EPA and describes the provisions of ODAFF's compliance monitoring and enforcement program;
- A Statement of Legal Authority (Attorney General Statement) certifying that state laws provide adequate authority to implement the AgPDES Program;
- An Enforcement Management System (EMS) that describes the compliance monitoring and enforcement protocol, as well as data management regarding compliance and enforcement activities.
- Copies of all applicable statutes and rules necessary to implement the AgPDES Program; and
- Copies of permit and application forms (ODAFF adopts all EPA permit application and report forms).

## **Scope of the Program**

The Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) is seeking authorization to administer a partial program of the EPA NPDES program for discharges relating to programs established pursuant to the environmental jurisdiction of the Department as stated in Section 1-3-101 of Title 27A of the Oklahoma statutes.

ODAFF has promulgated administrative rules at Oklahoma Administrative Code (OAC) 35:44-1-1 for the Oklahoma AgPDES program. These rules apply to discharges within Oklahoma and under the jurisdiction of ODAFF. Facilities in “Indian Country,” as defined in 18 U.S.C. § 1151 are outside ODAFF jurisdiction. In accordance with 33 U.S.C. § 1342(n)(4) and 40 CFR § 123.1(d)(1), EPA retains full permitting and compliance authority over facilities within ODAFF’s jurisdiction until such time as that authority is transferred to ODAFF in accordance with the Memorandum of Agreement. The Memorandum of Agreement identifies those conditions at the time of partial permit assumption where EPA retains permitting and/or compliance authority for any facilities.

ODAFF shares NPDES program authority within the state with the Oklahoma Department of Environment Quality (ODEQ). Most of statewide NPDES program authority for classes of activities is outside of ODAFF’s scope of authority. Specific jurisdiction of each agency is outlined in Chapter 3 of this document. With partial program authorization for NPDES, ODAFF conducts permitting, compliance and enforcement for activities within its jurisdiction for both individual and general permits for:

- Concentrated Animal Feeding Operations discharges;
- Discharges from silviculture activities;
- Discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal or industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to ODEQ;
- Storm water discharges within ODAFF’s jurisdiction; and
- Any other discharges under ODAFF jurisdiction.

The ODAFF implements the AgPDES program using the procedures, resources, policies and guidance documents described in this Program Description and the Enforcement Management System (EMS). The ODAFF adopts all EPA guidance documents referenced in this Program Description. The ODAFF issues Oklahoma AgPDES permits, conducts compliance and enforcement activities, records information and data, and reports to EPA on activities of all AgPDES permitted facilities.

## **Agency Jurisdictions**

According to 27A O.S. § 1-3-101 of the Oklahoma Environmental Quality Act, there are several Oklahoma agencies that have various duties related to preserving the environment. However, only the Oklahoma Department of Environmental Quality (ODEQ), the Oklahoma Corporation Commission and ODAFF have NPDES related jurisdiction. To date, the Corporation Commission is not pursuing NPDES program assumption for permitting, compliance and enforcement of storm water general permits for oil and gas exploration, drilling, development, production or operation construction sites. Consequently, the remainder of the NPDES program in Oklahoma is administered within the separate jurisdictions of two state agencies: the ODEQ and ODAFF. The jurisdictional areas of environmental responsibility specified in this chapter are in addition to those otherwise provided by law and assigned to the specific state environmental agency. The ODEQ and ODAFF's individual scopes of authority are discussed below.

### *ODEQ Jurisdiction*

The ODEQ was authorized to administer its portion of the NPDES program in 1996. ODEQ is authorized to issue all NPDES point source, sewage sludge disposal, storm water and pretreatment permits within the State of Oklahoma for those sources, activities and facilities which are defined in their environmental jurisdiction, except in Indian Country. Specifically, the ODEQ has environmental jurisdiction over:

- All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities (including pesticides in such discharges), except for those activities under the jurisdiction of ODAFF and the Corporation Commission;
- All nonpoint source discharges and pollution except for those activities under the jurisdiction of ODAFF and the Corporation Commission;
- Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act;
- Commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products;
- Slaughterhouses, but not including feedlots at these facilities;



- Aquaculture and fish hatcheries;
- Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.
- Point and nonpoint source discharges of pollutants and storm water to waters of the state from:
  - Refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
  - Manufacturing of equipment and products related to oil and gas; and
  - Bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Corporation Commission;
- The transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities; and
- The commingled pollutants and storm water of a deleterious substance from a Corporation Commission regulated facility or activity entering a point source discharge of pollutants or storm water from a facility or other activity regulated by the ODEQ.

#### ODAFF Jurisdiction

ODAFF has the following jurisdictional areas of environmental responsibility within the State of Oklahoma, except in Indian Country, for:

- Point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste;
- Pesticide control;
- Forestry and nurseries;
- Fertilizer;
- Facilities which store grain, feed, seed, fertilizer and agricultural chemicals;
- Dairy waste and wastewater associated with milk production facilities;

- Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of ODAFF;
- Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;
- Development and promulgation of a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility;
- Discharges from pesticide application; and
- Storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of ODAFF.

The Department has the necessary jurisdiction to regulate discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal or industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to ODEQ.

#### EPA Jurisdiction

EPA retains the jurisdiction for all discharges to Tribal Waters in Indian Country<sup>1</sup> and discharges within the following described categories:

- SIC Group 13 - Oil and gas extraction;
- SIC Group 46 - Pipelines, except pipelines within certain facilities regulated by ODEQ;
- SIC Group 492 - Natural gas transmission, except that ODEQ has jurisdiction over natural gas liquid extraction plants;
- Discharges related to construction activities for the categories in this paragraph; and

---

<sup>1</sup>Per 18 U.S.C. § 1151 Indian Country is defined as (a) all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

- Discharges related to transportation, storage and spills of deleterious substances including saltwater, mineral brines, waste oil, crude oil and other substances, which are produced from or obtained or used in connection with the drilling development, producing and operating of oil and gas wells at any of the facilities subject to EPA jurisdiction; however, if deleterious substances are commingled in a discharge regulated by ODEQ, the ODEQ has sole jurisdiction over the discharge and the commingled pollutants.

For purposes of the federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States is subject to the direct jurisdiction of the federal Environmental Protection Agency and is not required to be permitted by the ODEQ or the Corporation Commission for the discharge.

Unless otherwise agreed between ODAFF and EPA, EPA retains permit decision making authority over any permits which are currently out for EPA's public notice until final issuance, and permits for which variances or evidentiary hearings were requested before the AgPDES approval date until such time as they have been finally resolved. As each request is resolved, EPA shall notify ODAFF and transfer jurisdiction of that permit. Also, enforcement lead over permittees subject to ongoing formal enforcement actions by EPA (a list of which is agreed upon by EPA and ODAFF) is retained by EPA until final resolution of the enforcement actions. This resolution can be accomplished either by the permittee complying with the requirements of the enforcement action or by ODAFF replacing EPA's Administrative Order with an equivalent state Administrative Order. The issuance of an ODAFF Administrative Order shall only occur after both EPA and ODAFF agree that such an action is appropriate. Within forty five (45) days of permittee compliance with the EPA action or ODAFF has finalized an equivalent Administrative Order, the EPA action which constrained the transfer of enforcement responsibilities shall be closed and the file, and primary enforcement lead, shall be transferred to ODAFF. The ODAFF must assume primary enforcement lead on all facilities within its jurisdiction, within two (2) years of program approval, in accordance with the previously described procedures, except for those facilities in which an EPA administrative fine or EPA civil referral is pending. The MOA describes in detail the transfer of permitting and enforcement authorities from EPA to ODAFF.

### Indian Country

The State of Oklahoma does not seek NPDES permitting authority for discharges to Tribal water in Indian Country (as defined in 18 U.S.C. § 1151). ODAFF is unaware of any CAFO or animal wastewater facilities in Indian Country as defined above. EPA retains its authority to administer the NPDES program in Indian Country within Oklahoma.

## **RESOURCES AND FUNDING**

### **INTRODUCTION**

Adequate personnel and financial resources to administer the AgPDES program are critical to the success of the assumption process. In 2009, the Oklahoma State Legislature appropriated \$673,583.00 of State general funds to support ODAFF's AgPDES Program assumption. Then, in 2010 the State Board of Agriculture approved the AgPDES Rules with fee schedules prescribed in OAC § 35:44-1-22. The above resources allow for hiring an additional eight (8) FTEs or equivalent, for setting up offices and acquiring equipment and supplies, and for performing AgPDES permitting, compliance monitoring and enforcement functions. All current administrative and technical staff of the Agricultural Environmental Management Services Division (AEMS), twenty two (22) members including engineers, hydrologist, soil scientist, geologist, environmental program specialists, field inspectors, administrative officers, administrative assistants and clerical support, participate in the AgPDES program.

The fee schedules are found in Table4-1. The fees set out in OAC § 35:44-1-22 may be adjusted on July 1<sup>st</sup> of each year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar exceeds the CPI for the previous calendar year. Depending upon availability of federal and state appropriated funds, the fees may need to be revised to bring in additional monies. The fee schedule can be revised through established rulemaking procedures.

Table 4-2 is a cost breakdown of the AgPDES program's fee revenue and expenses necessary to operate the program. Table 4-3 identifies the specific funding available to support AgPDES for the first two years.

**TABLE 4-1**  
**AgPDES FEES SCHEDULE**

**General Permit**

As of July 1, 2010, application fees for authorization covered under a general permit shall be as shown in the following summary:

* Annual Fee .....	\$ 800
* Renewal or change electronically .....	\$ 75
* Renewal or change by paper .....	\$ 100
* New application fee .....	\$ 350
* Expansion fee.....	\$ 350
* Storm water construction authorization .....	\$ 316
* Storm water construction waiver (rainfall erosivity) Electronically .....	\$ 150
* Storm water construction waiver (rainfall erosivity) By paper .....	\$ 200

**Individual Permit**

As of July 1, 2010, application fees for authorization covered under an individual permit shall be as shown in the following summary:

* Annual Fee .....	\$ 1,250
* Renewal.....	\$ 315
* New application fee .....	\$ 350

**TABLE 4-2  
COST SUMMARY**

<b>INCOME/RECEIPTS</b>
------------------------

**GENERAL PERMIT INCOME**

120 EPA CAFO Permitted Facilities	
120 x \$800 annual fee .....	\$ 96,000
120 EPA Permitted CAFOs Renewal Fee x \$88	
(\$75 to \$100).....	\$ 10,560
50 New CAFO NPDES Permits Application Fee x \$350.....	\$ 17,500
<u>First Year TOTAL INCOME.....</u>	<u>\$124,600</u>
Each year thereafter: 170 x \$800 annual fee.....	<u>\$136,000</u>

**INDIVIDUAL PERMIT INCOME**

First year – 10 new Permits Application Fee:	
10 x \$350 fee/ea .....	\$ 3,500
Each year thereafter: 10 x \$1,250 annual fee.....	<u>\$12,500</u>

**ANNUAL EXPENSES TO CONDUCT THE AGPDES PROGRAM**

• Salaries/Benefits	\$426,000
• Professional Services	\$ 56,000
• Travel	<u>\$ 50,000</u>
Total:	\$532,000

NOTE: The Salaries/Benefits shown above is for eight (8) new AgPDES FTE employees' salaries, benefits, longevity costs. There are an additional twenty two (22) existing ODAFF, AEMS Division staff who will be partially involved with the AgPDES Program. Please refer to Chapter 5 of the Program Description, Organization and Responsibilities – Figure 5.1 Organizational Chart for more job title specifics. The Professional Services listed above is for two (2) part-time contract personnel. If permitting revenue are less than anticipated, expenses will be covered from fee revenues, Legislature-appropriated dollars, and if necessary from general Agency funds.

**TABLE 4-3  
SOURCES TO PAY PROGRAM EXPENSES**

<b>FIRST AND SECOND YEARS BUDGET SOURCES</b>
--

**FIRST YEAR**

General Permit Income [see Table 4-2] .....	\$124,600
Individual Permit Income [see Table 4-2] .....	\$ 3,500
2009 Legislature Appropriated Funds In Reserve at ODAFF (191 Fund).....	<u>\$403,900</u>
Total First Year Revenue Source Income .....	\$532,000
Total First Year Expenses (see Table 4-2).....	\$532,000

**SECOND YEAR**

General Permit Income [see Table 4-2] .....	\$136,000
Individual Permit Income [see Table 4-2] .....	\$ 12,500
Carryover 2009 Legislature Appropriated Funds In Reserve at ODAFF [\$673,583 - \$403,900 191 Fund] .....	\$269,683
ODAFF Existing General Operating Funds [192 Fund] .....	<u>\$113,817</u>
Total Second Year Revenue Source Income .....	\$532,000
Total Second Year Expenses .....	\$532,000

## **Organization and Responsibilities**

### The Oklahoma Department of Agriculture, Food, and Forestry

The Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) oversees one of the state's largest industries. Agriculture contributes \$7.1 billion annually to the state's economy. Oklahoma agriculture represents ten percent of the state's gross product and provides one out of every six jobs.

The ODAFF is a public service agency that serves both as an advocate and as a regulator for the state's agricultural producers and consumers. The ODAFF enforces state laws that enhance the quality and value of agricultural crops, livestock and food products. To meet the needs for environmental protection, ODAFF staff collaborates to ensure that environmental programs produce results that meet applicable standards and requirements of state and federal guidelines, regulations, and statutes for each ODAFF program area.

The ODAFF consists of the State Board of Agriculture (Board), the Commissioner of Agriculture, and eleven divisions. The Commissioner of Agriculture is appointed by the Governor and also serves as Secretary of Agriculture in the Governor's Cabinet. The Commissioner is the chief administrative officer and has duties germane to the AgPDES program including employment of ODAFF staff, assigning or delegating staff duties, organizing the agency and entering into agreements.

As one of the eleven ODAFF divisions, the Agricultural Environmental Management Services (AEMS) was created in 1997 to help develop, coordinate and oversee environmental policies and programs. AEMS is subdivided into three sections: the Facility Performance Section, the Permits, Licensing and Registration Section, and the Environmental Program and Policy Section.

### The State Board of Agriculture

A five member State Board of Agriculture serves as the rulemaking authority of the ODAFF as further discussed in the Statement of Legal Authority. Each position is appointed by the governor with Senate confirmation. Each member of the Board represents one of four agricultural districts in the state with one at large member. The Board is authorized to promulgate rules for the administration, implementation and enforcement of all regulatory programs of the ODAFF, including those related to AgPDES.

### Agricultural Environmental Management Services Division

The Agricultural Environmental Management Services Division is responsible for implementing the federal (AgPDES) program which encompasses discharges relating to Oklahoma's concentrated animal feeding operations, pesticide control, silviculture, and storm water from activities under the jurisdiction of ODAFF as stated in Section 1-3-101 of Title 27A of the



Oklahoma Statutes. In addition to AgPDES responsibilities, AEMS implements all state environmental regulatory programs related to animal waste. These programs include the state licensing, regulation and inspection of dairy, beef, swine, and poultry breeding, growing and feeding facilities, registration of poultry feeding operations, and licensing of poultry waste applicators.

For both state programs and AgPDES, AEMS develops guidelines and recommended best management practices for agriculture related dischargers for the protection of water quality and the environment. AEMS inspectors perform routine inspections, provide technical assistance, and investigate complaints regarding discharges or disposal of waste from all Oklahoma livestock, poultry, and composting facilities under ODAFF's jurisdiction. AEMS inspectors also coordinate with inspectors of other Divisions of ODAFF to perform inspections at other agricultural operations related to water quality protection.

AEMS has the equivalent of 22 authorized staff positions. Eight new positions are added in support of the AgPDES program, bringing the total to 30 AEMS employees. All of the 30 positions participate in the AgPDES program and are involved in administration, permitting, compliance inspections, enforcement, water quality, data management and clerical support. Figure 5-1 shows the organization of AEMS.

Recruitment and replacement of employees is generally not a problem. Turnover rate for personnel has historically been low and vacancies typically are advertised and filled within two to four months of being vacated.

When a permanent full time position is vacated, the position itself remains authorized and refilling it is a routine administrative function. Most full time positions are filled competitively from existing personnel registers of qualified candidates maintained by the Oklahoma Office of Personnel Management. Job vacancies typically are also posted internally to allow current employees the opportunity to apply. Supervisors are provided with a list of the most qualified candidates meeting the requirements for a specific job and a final selection is made through a standardized interview process consisting of a team of interviewers that ask each candidate the same preselected questions. The AEMS Division Director is the final approving authority for refilling positions.

Some AEMS positions are contract positions that are filled through bidding and direct hiring by the AEMS Division Director. Prior to a contractor beginning work, a contract is approved by the State Board of Agriculture at one of their monthly meetings and subsequently by the Office of State Finance. A contract is normally for four years of service. At the end of an expired term, a contractor may also bid for the new or renewed contract.

The following personnel are the principal staff members associated with AgPDES and permitting, compliance, and enforcement activities. Each area of the AEMS Division is discussed below, followed by the general specifications and responsibilities for each position in the Division. All positions described below are integral to the AgPDES program.

## **Staff Responsibilities**

**AEMS Division Director** (Agricultural Services Administrator): The AEMS Division Director is responsible for the overall management of program and negotiates terms and conditions to assure all rules and program activities are met, develops Division policies, prepares the Division annual budget and work plans, and develops performance measures and performance reports. The Division Director plans, organizes and directs a statewide environmental program. This position coordinates the operation of the AEMS Division, which is involved in administering multifunctional environmental programs, including compliance monitoring and enforcement. The Division Director works with the Office of General Counsel on legislation and rules, manages the rule promulgation process, and testifies on behalf of the administration at legislative hearings. The Division Director supervises all AEMS staff, but is not involved in AgPDES permitting and enforcement final decisions.

**AgPDES Director** (Agricultural Services Administrator or equivalent): The AgPDES Director is created by the AgPDES Act and is responsible for overseeing the AgPDES Program and making final decisions on permit issuance and compliance and enforcement actions as further discussed in the Statement of Legal Authority. The AgPDES Director reviews federal initiatives and rules relating to the NPDES program, tracks national NPDES efforts and where appropriate, aligns the state's priorities with national priorities. This position requires experience in managing agricultural water quality permitting and compliance and enforcement activities. The AgPDES Director is the point of contact with EPA regarding permitting and compliance and enforcement issues related to the AgPDES Program.

## ***Facility Performance Section***

The Facility Performance Section's primary purpose is to conduct compliance and enforcement activities associated with AgPDES related permits as well as other permits and licenses regulated by AEMS Division and is led by a Section Supervisor (Environmental Programs Manager). The Section consists of two teams, including a Compliance Assistance Team and a Field Operations and Enforcement Team. The Facility Performance Section Supervisor (Environmental Programs Manager) directs the operation of compliance evaluation and coordination of enforcement activities of the AEMS Division. The Section Supervisor also assists the AEMS Director as well as the AgPDES Director with program activities related to compliance and enforcement.

### **Compliance Assistance Team**

The Compliance Assistance Team within the Facility Performance Section is comprised of a Complaint and Enforcement Coordinator (Administrative Programs Officer) and an Administrative Assistant or equivalent. The team conducts compliance reviews of discharge monitoring reports (DMRs) and other reports required by the permit or enforcement orders and file reviews. The team also enters and tracks complaint, compliance and enforcement information in the ODAFF databases. The team tracks all

DMR, reports, permit, compliance, enforcement, inspection and fee information, and manages pertinent data transfer to EPA's Integrated Compliance Information System – National Pollutant Discharge Elimination System (ICIS-NPDES) database.

***Staff Responsibilities:***

The Complaint and Enforcement Coordinator, in addition to administrative duties, assists field inspectors of the Field Operations and Enforcement Team in the coordination of complaint investigation, enforcement activities and compliance monitoring. The Complaint and Enforcement Coordinator also assists in the development and implementation of enforcement tracking procedures and conducts review and administrative tracking of complaint resolution and compliance activities. The Complaint and Enforcement Coordinator conducts initial screening of permittee self monitoring and noncompliance reports, as well as annual reports; initiates informal and formal enforcement actions to address nonsubmittal and effluent violations detected during screening of DMRs; and prepares special reports for the Section Supervisor and other staff. The Complaint and Enforcement Coordinator is also responsible for data entry and data management of AEMS databases and ICIS-NPDES systems.

The Administrative Assistant provides administrative and clerical support for program activities of the Compliance Assistance Team of the Facility Performance Section and AEMS Director.

**Field Operations and Enforcement Team**

The Field Operations and Enforcement Team consists of an Enforcement Officer (Environmental Program Specialist) and inspectors (Environmental Program Specialists or Agriculture Inspectors). This team conducts facility inspections to ensure compliance with AgPDES permits or other AEMS's licenses and permits, and performs duties related to water and soil sample collection, referral of facilities for enforcement actions and follow up inspections as warranted.

***Staff Responsibilities:***

The Enforcement Officer coordinates and schedules all AgPDES inspections, other inspections and associated enforcement activities, and initiates enforcement activities. The Enforcement Officer is the primary contact on enforcement issues.

The Inspectors (Environmental Programs Specialists or Agriculture Field Inspectors) performs field surveillance activities that include annual inspections, complaint investigations, compliance evaluation inspections (CEIs), and compliance sampling inspections (CSIs) at CAFOs and poultry feeding operations. They are responsible for writing inspection reports, responding to complaints and conducting follow up enforcement and tracking of noncompliant facilities.

***Permits, Licensing and Registration Section***

The Permits, Licensing and Registration Section has primary responsibility for drafting and issuing AgPDES permits and other permits or licenses. It is led by a Section Supervisor (Engineering Manager). The Section also implements the Division's permit, license and registration fee system, which is conducted by a Fee Coordinator (Administrative Programs Officer) and an Administrative Assistant.

The Section Supervisor (Engineering Manager) directs the activities of permit writing and issuance, including reviewing draft permits for completeness, accuracy and consistency. The Section Supervisor coordinates with other AEMS Sections as needed for activities on permitting and licensing and assists the AgPDES Director with program activities. The Section Supervisor also acts as principal liaison between AgPDES permitting staff, the EPA NPDES Permitting Section and interested citizens or groups with respect to permit issues.

***Staff Responsibilities:***

Permit Writers (Environmental Engineer or Environmental Specialist) review permit applications or Notices of Intent (NOI) to be covered under a General Permit, Comprehensive Nutrient Management Plans (CNMPs) or Nutrient Management Plans (NMP) for completeness, prepare public notices, fact sheets or statement of basis, respond to public comments, draft proposed and final permits, and permit modification, prepare authorizations for coverage under a General Permit, and perform other permit issuance or modification tasks. Permit Writers also review CAFO or Swine license applications, pollution prevention plans, closure plans and lagoon integrity reports.

The Fee Coordinator (Administrative Programs Officer) is responsible for fee invoicing, collections and payment processing. The Fee Coordinator prepares daily deposits for submission to ODAFF's Finance Division, assists programming staff in development of computer programs to assess and track fees and payments, and prepares fee reports as requested by AgPDES Director, AEMS Division Director or other staff.

The Administrative Assistant provides administrative support to the Permits, Licensing, and Registrations Section and to the AgPDES Director. The Administrative Assistant also assists with public participation activities related to permit issuance and is responsible for tracking all permit or authorization issuance and expiration dates, public notice dates, and application or NOI received, including managing pertinent data transfer to EPA's national ICIS NPDES data system.

The Administrative Technician provides clerical support to the Permits, Licensing, and Registrations Section staff and the AgPDES Director.

***Environmental Program and Policy Section***

The Environmental Program and Policy Section consists of a Section Supervisor (Environmental Programs Manager) and a variety of experts of environmental programs, soil science, and water

quality management. The focus of the Section is on the protection and improvement of the quality of the state's waters through the reduction and prevention of point and nonpoint source pollution using a combination of regulatory and voluntary programs. This Section works in cooperation with other state agencies in the reviews of Oklahoma's Water Quality Standards and the Water Quality Standards Implementation Plan with the Oklahoma Water Resources Board, in development of the state's 303(d) list and 305(b) integrated report (IR) and the Continuing Planning Process (CPP) with the Oklahoma Department of Environmental Quality, and in watershed protection. The Section assists the other agencies in identifying state water quality priorities and needs and provides input in the development of watershed management plans. Staff of this Section participates in the Total Maximum Daily Load (TMDL) Work Group in reviewing TMDL reports and may develop waste load allocations for AgPDES related discharges

The Section Supervisor (Environmental Programs Manager) directs the activities of the Section that support overall water quality programs, assists the AEMS Director and AgPDES Director with program activities, and coordinates water quality management activities, soil and hydrologic studies state wide.

### ***Staff Responsibilities***

The Environmental Programs Specialist evaluates and reviews complex reports related to animal waste disposal, TMDLs, water quality, and the continuing planning process. The Environmental Programs Specialist also provides technical support on water quality data interpretation to permit writers and to field inspectors, reviews and develops reports on water quality modeling, soil assessment, hydraulics, hydrology and computer based Geographical Information Systems, collects soil samples and evaluates soil characteristics, assists field inspectors and permit writers in assessing the impact of land application of waste on the watersheds, investigates pollution sources through soil and hydrologic studies, assists Permit Writers in the review of CNMPs and NMPs, and assists farmers, growers, and producers in developing Animal Waste Management Plans or CNMPs and NMPs.

**OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
AGRICULTURAL ENVIRONMENTAL MANAGEMENT SERVICES  
ORGANIZATIONAL PLAN POSITION DESCRIPTIONS**

**POSITION TITLE:** AEMS Division Director (Agricultural Services Administrator)

**SUMMARY:** Plans, organizes and directs a statewide environmental program under the jurisdiction of ODAFF and coordinates the operations of the AEMS Division, which is involved in administering multifunctional environmental programs, compliance monitoring and enforcement.

**RESPONSIBLE TO:** Commissioner of Agriculture

**DUTIES AND RESPONSIBILITIES:**

1. Performs advanced administrative work in the coordination and management of a statewide program involving statewide agricultural services.
2. Responsibilities will include assisting in planning, coordinating and directing the work of a division in the delivery of program services and the enforcement of applicable state and federal laws.
3. Assists in the development or amendment of laws concerning agricultural services and operations.
4. Prepares reports concerning agricultural matters and concerns.
5. May conduct enforcement and regular inspections and may assist environmental specialists in field.
6. Issues final enforcement orders by ODAFF and assesses administrative penalties.
7. Issues, denies, modifies, amends, renews, refuses to renew, suspends, places on probation, reinstates, or revokes licenses or permits, except for AgPDES Permits.

**KNOWLEDGE, ABILITIES, SKILLS:**

- Knowledge of state and federal laws concerning agricultural production and environmental protection.
- Knowledge of various agricultural industry operations in the area of assignment.
- Knowledge of supervisory principles and practices.
- Knowledge of monitoring and surveillance techniques and to collect and analyze data.
- Ability to review penalty calculations and enforcement documents to ensure that the amount of the penalty for violations are consistent with the CWA Penalty Policy and timely and appropriate enforcement action is taken.
- Ability to manage programs and personnel.
- Ability to interpret state and federal laws.
- Ability to establish and maintain effective working relationships with others.
- Ability to write and review technical reports.
- Ability to supervise and direct the work of others.

**QUALIFICATIONS:**

A bachelor's degree in agriculture, economics, forestry, public administration, marketing, chemistry, biological sciences, physical sciences, mathematics, or a closely related field and three years of experience in agricultural inspection, regulation or production, forestry, plant industries, laboratory management, consumer protection, or public administration, including three years in a supervisory capacity, or an equivalent combination of education and experience. Specific experience is required in agriculture, forestry, conservation, environmental sciences or other areas as may be required by the Commissioner.

**POSITION TITLE:** AgPDES Director (Agricultural Services Administrator)

**SUMMARY:** Provides overall direction and management of the AgPDES Program, making final decisions on permit issuance, and compliance and enforcement actions. Reviews federal initiatives and rules relating to the NPDES program; tracks national NPDES efforts and where appropriate, aligns the state's priorities with national priorities. Plans and initiates an inspection or monitoring program related to AgPDES activities in coordination with the AEMS Director. Also is the signatory authority on ODAFF's AgPDES issued permits and enforcement orders.

**RESPONSIBLE TO:** Commissioner of Agriculture

**DUTIES AND RESPONSIBILITIES:**

1. Performs advanced administrative work in the coordination and management of a statewide program involving water quality permitting and statewide agricultural services.
2. Responsibilities will include assisting in planning, coordinating and directing the work of a division in the delivery of program services and the enforcement of applicable state and federal laws.
3. Assists in the development or amendment of laws concerning agricultural services and operations.
4. Prepares reports concerning agricultural matters and concerns related to the AgPDES program.
5. May conduct enforcement and regular inspections and may assist environmental program specialists in the field.
6. Issues final enforcement orders by ODAFF and assesses administrative penalties for those activities related to AgPDES program.
7. Issues, denies, modifies, amends, renews, refuses to renew, suspends, places on probation, reinstates, or revokes AgPDES permits.
8. Is the point of contact with EPA regarding permitting and compliance and enforcement issues related to the AgPDES Program.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of state and federal laws concerning agricultural production and environmental protection.
- Knowledge of various agricultural industry operations in the area of assignment.
- Knowledge of supervisory principles and practices.
- Knowledge of monitoring and surveillance techniques and to collect and analyze data.
- Ability to review penalty calculations and enforcement documents to ensure that the amount of the penalty for violations are consistent with the CWA Penalty Policy and timely and appropriate enforcement action is taken.
- Ability to manage programs and personnel.
- Ability to interpret state and federal laws.
- Ability to establish and maintain effective working relationships with others.
- Ability to write and review technical reports.



- Ability to supervise and direct the work of others.

**QUALIFICATIONS:**

A bachelor's degree in agriculture, economics, forestry, public administration, marketing, environmental engineering, chemistry, biological sciences, environmental sciences, physical sciences, mathematics, or a closely related field and three years of experience in agricultural inspection, regulation or production, forestry, plant industries, laboratory management, environmental programs management, consumer protection, or public administration, including three years in a supervisory capacity, or an equivalent combination of education and experience. Specific experience is required in agriculture, forestry, conservation, environmental sciences or other areas as may be required by the Commissioner.

**POSITION TITLE:** Supervisor, Facility Performance Section (Environmental Programs Manager)

**SUMMARY:** Directs the operation of compliance and coordination of enforcement activities within the Section and provides overall direction and coordination to the Section. Coordinates and supervises field surveillance of concentrated animal feeding operations, storm water agricultural construction sites, and other agricultural related operations under the jurisdiction of the AEMS Division and/or pertaining to AgPDES Program. May conduct enforcement and compliance inspections. May assist engineers and environmental program specialists in the field.

**RESPONSIBLE TO:**

AgPDES Director on AgPDES related activities, and to AEMS Division Director on other permitting and licensing activities

**DUTIES AND RESPONSIBILITIES:**

1. Administers all established policies and procedures related to the enforcement and tracking of all AgPDES permits.
2. Coordinates and supervises all data processing and record keeping related to compliance monitoring and enforcement including EPA's Integrated Compliance Information System – National Pollutant Discharge Elimination System (ICIS-NPDES).
3. Schedules periodic inspections of facility or site operations, equipment, and surrounding area. Advises officials, managers and technical staff at agricultural facilities on requirements to comply with AgPDES rules and regulations.
4. Coordinates complaint investigations.
5. Oversees AgPDES enforcement activities.
6. Prepares written reports and files on inspection activities. Writes correspondence to public and private officials relating to inspection results of compliance or noncompliance and reviews draft enforcement documents written by the Enforcement Officer.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of administrative and scientific field applicable to work being performed.
- Knowledge of state rules and regulations, standards, and restrictions.
- Knowledge of the CWA rules and regulations, AgPDES permit program, and EPA's CWA Penalty Policy.
- Ability to evaluate inspection and surveillance data in a timely and appropriate manner to determine compliance with state and federal regulations.
- Ability to supervise technical and administrative personnel.

**QUALIFICATIONS:**

Requirements at this level consist of a master's degree in a physical, natural, biological, geological or hydrological science, engineering, environmental science, environmental health,

geography, agricultural sciences or related field and three years of professional experience in one of the above areas.

**OR**

A bachelor's degree in one of the above areas and five years of the qualifying experience. Plus additional knowledge of personnel training and planning, and ability to develop, implement and manage programs dealing with large scale problems and two additional years of qualifying experience in an administrative capacity.

**POSITION TITLE:** Complaint and Enforcement Coordinator (Administrative Programs Officer)

**SUMMARY:** Assists in the coordination of all complaints, enforcement and compliance monitoring activities. Coordinates all data entry processing and retrievals from in house databases and federal Integrated Compliance Information System – National Pollutant Discharge Elimination System (ICIS-NPDES).

**RESPONSIBLE TO:** Supervisor, Facility Performance Section

**DUTIES AND RESPONSIBILITIES:**

1. Assists in coordination of all enforcement activities. Coordinates order tracking summaries. Coordinates monthly enforcement meetings.
2. Initiates informal and formal enforcement actions.
3. Assists with referrals of enforcement actions to Office of General Counsel.
4. Coordinates compliance monitoring activities.
5. Coordinates complaint investigations following AEMS's Complaint Protocol
6. Supervises all data management efforts of the AEMS Division.
7. Coordinates with Information Technology on data system network configurations and hardware.
8. Provides technical assistance: interacts with permit holders to answer questions on information corrected (e.g. address), policy questions (e.g. due date), miscellaneous questions (e.g. completing forms); and writes letters of correspondence.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of data entry procedures.
- Knowledge of structure and functioning of the ICIS-NPDES database.
- Knowledge of quality control measures.
- Ability to interpret AgPDES permits and enforcement orders.
- Ability to extract information necessary to maintain database.
- Ability to interact with the AgPDES permittees.

**QUALIFICATIONS:**

Requirements at this level consist of a bachelor's degree and one year of professional or technical administrative\* experience in business or public administration.

**OR**

An equivalent combination of education and experience, substituting one year of qualifying experience for each year of the required education.

\*Technical administrative experience would include highly complex clerical work gained under the direct supervision of a professional supervisor or manager.

**POSITION TITLE:** Administrative Assistant

**SUMMARY:** Assists in the coordination of all enforcement and compliance monitoring activities.

**RESPONSIBLE TO:** Complaint and Enforcement Coordinator, Compliance Assistance Team

**DUTIES AND RESPONSIBILITIES:**

1. Data entry, processing and retrievals from in-house databases and federal ICIS-NPDES database.
2. Provides administrative review and performs necessary administrative review of DMRs, noncompliance reports, bypass or discharge reports, compliance schedule reports, enforcement order reports, inspection reports, etc., to determine the need for formal or informal enforcement action.
3. Maintains a log of administrative review and enforcement action taken or not taken.
4. Provides administrative support to AEMS Division Director.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of enforcement and compliance monitoring procedures.
- Ability to interpret AgPDES permits and enforcement orders.
- Knowledge of state pollution control regulations, standards, and restrictions.
- Ability to evaluate inspection and surveillance data to determine compliance with state and federal regulations.

**QUALIFICATIONS:**

Requirements at this level consist of four years of technical clerical office work plus one year of additional qualifying experience.

**OR**

An equivalent combination of education and experience.

**POSITION TITLE:** Enforcement Officer (Environmental Programs Specialist)

**SUMMARY:** Conducts technical review of violations that meet or exceed SNC and any other violations referred for technical review. Initiates timely and appropriate enforcement by drafting informal and formal enforcement actions and penalty orders. Calculates penalties for violations consistent with the CWA Penalty Policy.

**RESPONSIBLE TO:** Supervisor, Facility Performance Section

**DUTIES AND RESPONSIBILITIES:**

1. Recommends enforcement activities to the Section supervisor.
2. Drafts enforcement orders for review by supervisor, AEMS Director and AgPDES Director.
3. Assists with referrals of enforcement actions to AEMS Director, AgPDES Director and Office of General Counsel.
4. Schedules compliance inspection activities.
5. Drafts written reports and files on inspection activities. Writes correspondence to public and private officials relating to inspection results of compliance or noncompliance.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of the CWA rules and regulations, AgPDES permit program, and EPA's CWA Penalty Policy.
- Knowledge of state pollution control regulations, standards, and restrictions.
- Knowledge of inspection and surveillance equipment and techniques.
- Knowledge of agricultural wastewater treatment processes and operations.
- Ability to evaluate inspection and surveillance data to determine compliance with state and federal regulations.
- Ability to lead a work group consisting of technical and administrative personnel.
- Ability to inspect facilities to determine compliance with state and federal regulations.
- Ability to assess and calculate penalties for violations that are consistent with CWA Penalty Policy.
- Ability to negotiate and resolve complex technical and regulatory problems using environmental science concepts, principles and practices.
- Ability to work with diverse groups, including engineering, scientific, administrative, management, and local, state, and federal employees.

**QUALIFICATIONS:**

Requirements at this level consist of a bachelor's degree with at least 24 semester hours in a physical, natural, or biological science, chemistry, geology, hydrology, physical geography, epidemiology, environmental science, agricultural sciences, environmental health or civil, agricultural, environmental, geological or chemical engineering, plus three years of professional experience in one of the areas listed or a master's degree in a qualifying area and two years of professional experience.

**POSITION TITLE:** AEMS Inspector (Environmental Programs Specialist or Agriculture Field Inspector)

**SUMMARY:** Works under general supervision of the Section Supervisor. Performs inspections and field surveillance of agricultural operations. Investigates complaints.

**RESPONSIBLE TO:** Supervisor of Facility Performance Section

**DUTIES AND RESPONSIBILITIES:**

1. Performs compliance inspections and field surveillance at AgPDES facilities. Schedules and performs periodic inspections of facility or site, operations, equipment, and surrounding area. Collects samples. Checks facility equipment and operations, and records observations and data on inspections using checklist or in narrative report form. Reports inspection results to supervisor. Advises officials, technical staff, facilities, and industries on requirements to comply with state pollution control requirements.
2. Investigates complaints. Receives written or oral complaints. Investigates complaints by observing conditions. Inspects facility by routine procedure within assigned area and collects samples. Interviews complainants, owners, and operators of alleged polluting facility. Determines validity of complaint. Recommends to supervisor action needed to resolve problem.
3. Performs administrative duties. Collects data and presents evidence. Testifies as a witness in court cases. Recommends enforcement activities to supervisor. Assists professional staff in conducting special studies. Prepares written reports and files on inspection activities. Drafts correspondence to public and private officials relating to inspection results. Maintains records on inspections performed.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of the CWA rules and regulations, AgPDES permit program, and EPA's CWA Penalty Policy.
- Knowledge of state pollution control regulations, standards, and restrictions.
- Knowledge of inspection and surveillance equipment and techniques.
- Knowledge of agricultural wastewater treatment processes and operations.
- Ability to evaluate inspection and surveillance data to determine compliance with state and federal regulations.
- Ability to inspect facilities to determine compliance with state and federal regulations.
- Ability to negotiate and resolve complex technical and regulatory problems associated with water pollution using environmental science concepts, principles and practices.
- Ability to work with diverse groups including engineering, scientific, administrative, management, and local, state and federal employees.

**QUALIFICATIONS:**

For Environmental Program Specialist: Requirements at this level consist of a bachelor's degree with at least 24 semester hours in a physical, natural, or biological science, chemistry, geology,

hydrology, physical geography, epidemiology, environmental science, agricultural sciences, environmental health or civil, agricultural, environmental, geological or chemical engineering, plus one year of professional experience in one of the areas listed; or a master's degree in a qualifying area.

**OR**

For Agriculture Field Inspector: Requirements at this level consist of a bachelor's degree in an agricultural, biological, plant, animal, physical or natural science, food technology, or a closely related field; an equivalent combination of education and experience; or possession of the appropriate USDA license prescribed by the contract creating the position; plus two additional years of qualifying inspection experience or administrative or managerial experience in an agricultural related field.



**POSITION TITLE:** Supervisor, Permits, Licensing and Registration Section (Engineering Manager)

**SUMMARY:** Works under general direction. Reviews draft discharge permits. Manages the Permits, Licensing and Registration Section. May conduct permitting inspections. Primary point of contact for the EPA NPDES permitting section.

**RESPONSIBLE TO:** AgPDES Director on AgPDES related activities, and to AEMS Division Director on other permitting and licensing activities

**DUTIES AND RESPONSIBILITIES:**

1. Reviews draft licenses, discharge permits or authorizations based on a review of permit application or NOI, and AEMS files.
2. Conducts permitting and licensing inspections, as necessary.
3. Provides overall direction and coordination to the Section. Assists in program policy development consistent with goals set out by EPA. Coordinates preparation for issuance, modification or revocation of all AgPDES permits or other permits or licenses in a manner consistent with existing laws, regulations and policies.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of engineering field applicable to work being performed.
- Knowledge of engineering theory and principles.
- Knowledge of construction plans and design.
- Ability to design and implement engineering activities and to organize projects.
- Ability to express ideas clearly and concisely, both orally and in writing.
- Ability to inspect facilities to determine compliance with state or federal permit regulations or safety laws and standards.
- Ability to supervise professional and administrative staff.
- Ability to evaluate engineering problems and recommend possible solutions.

**QUALIFICATIONS:**

Requirements at this level consist of a bachelor's degree in engineering from a college or university which is recognized by the Oklahoma State Board of Registration for Professional Engineers and Land Surveyors, in accordance with the standards of the Accreditation Board of Engineering Technology, registration as a Professional Engineer with the Oklahoma State Board of Registration for Professional Engineers and Land Surveyors, and two years of supervisory experience in a professional engineering related field.

**POSITION TITLE:** Permit Writer (Environmental Engineer or Environmental Programs Specialist)

**SUMMARY:** This person reviews permit applications for administrative completeness, drafts public notices, drafts permits, finalizes permits and licenses based on input received from EPA and other sources, and testifies in public meetings and hearings as necessary.

**RESPONSIBLE TO:** Supervisor, Permits, Licensing and Registration Section

**DUTIES AND RESPONSIBILITIES:**

1. Develops draft individual and general permits, or licenses based on a review of permit applications, Notice of Intent (NOI) and AEMS files. Prepares draft individual or general permits, fact sheets or statement of basis, or authorizations for coverage under a general permit, responds to public comments on draft permits or authorizations, and finalizes the permits or authorizations
2. Conducts permitting inspections, as necessary.
3. Reviews animal waste retention structure closure plans for approval.
4. Reviews applications of building permits for issuance of license.
5. Ensures pollution prevention plans, animal waste management plans, NMPs or CNMPs and best management practices (BMPs) are appropriate for facility.
6. For Professional Engineer: In addition to regular permit drafting function, responsible for drafting complex individual permits and providing training for other permit writers.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of engineering field or environmental sciences applicable to work being performed.
- Ability to lead a work group consisting of engineers, environmental specialists and administrative personnel.
- Ability to prepare studies and make recommendations as to solutions of environmental or engineering problems.
- Ability to conduct permit site inspections in accordance with state rules and regulations for permit or license issuance.

**QUALIFICATIONS:**

For **Environmental Engineer**: Requirements at this level consist of a bachelor's degree in engineering from a college or university which is recognized by the Oklahoma State Board of Registration for Professional Engineers and Land Surveyors (OBRPELS), in accordance with the standards of the Accreditation Board of Engineering; and the candidate shall major in civil, agricultural, biological, environmental, geological or chemical engineering. Registration as an Engineer Intern with OBRPELS is preferable.

**OR**

For **Professional Engineer**: Similar requirements for Environmental Engineer classification and registered with OBRPELS as a Professional Engineer.

**OR**

For **Environmental Program Specialist:** Have at least 24 semester hours in a physical, natural, or biological science, chemistry, geology, hydrology, physical geography, epidemiology, environmental science, agricultural sciences, or environmental health.

**POSITION TITLE:** Fee Coordinator (Administrative Programs Officer)

**SUMMARY:** Works under direction of the Permitting, Licensing and Registration Section Supervisor. Coordinates all AgPDES fee collection and payment processing. Performs administrative duties. May attend workshops, training sessions and conventions, represent the Department on various committees. Performs other duties as assigned.

**RESPONSIBLE TO:** Supervisor, Permits, Licensing and Registration Section

**DUTIES AND RESPONSIBILITIES:**

1. Permit and license fee invoicing, collections and payment processing.
2. Prepares daily deposit for submission to ODAFF's Finance Division.
3. Assists programming staff in development of computer programs to assess and track fees and payments.
4. Prepares fee reports as requested by the AgPDES Director, AEMS Division Director or staff.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of budgeting procedures.
- Knowledge of fee invoicing, collection and payment process.
- Knowledge of data entry and managing procedures.
- Ability to use Microsoft software to prepare correspondence and reports.
- Ability to work with ODAFF's Finance Division and State Office of Finance.
- Ability to extract information necessary to maintain database.
- Ability to interact with the AgPDES permittees and public.

**QUALIFICATIONS:**

Requirements at this level consist of a bachelor's degree and one year of professional or technical administrative\* experience in business or public administration.

**OR**

An equivalent combination of education and experience, substituting one year of qualifying experience for each year of the required education.

\*Technical administrative experience would include highly complex clerical work gained under the direct supervision of a professional supervisor or manager.

**POSITION TITLE:** Administrative Assistant

**SUMMARY:** Works under the direction of the Permitting, Licensing and Registration Section Supervisor. Coordinates all AgPDES related public participation and public notice activities. Performs administrative duties. May attend workshops, training sessions and conventions, represent the Department on various committees. Performs other duties as assigned.

**RESPONSIBLE TO:** Supervisor, Permits, Licensing and Registration Section

**DUTIES AND RESPONSIBILITIES:**

1. Assists supervisor. Reads incoming correspondence, and retains or routes to supervisor. Composes routine correspondence.
2. Gathers files and other pertinent data to facilitate answering of correspondence by supervisor. Answers telephone and provides information for routine questions. Screens calls. Assists supervisor in gathering information for reports and meetings.
3. Disseminates public notice and fact sheets developed by permit writers to prescribed entities. Coordinates interchange of participation between the public and ODAFF during the permitting process.
4. Provide administrative support to the Section staff and to the AgPDES Director.
5. Performs administrative duties. May record, organize, and type minutes of meetings. Keeps staff supplied with time sheets, booklets, and other reading material. Inventories and orders office supplies.
6. Types some material from rough draft and form letters.
7. Operates office equipment such as word processor, photocopier, telefax, and personal computer.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of business English, spelling, and punctuation.
- Knowledge and training in handling of Confidential Business Information.
- Knowledge of business arithmetic.
- Ability to type.
- Ability to operate standard office equipment.
- Ability to type at least 40 words per minute.
- Ability to use Microsoft software to prepare correspondence and reports.

**QUALIFICATIONS:**

Requirements at this level consist of four years of technical clerical office work plus one year of additional qualifying experience.

**OR**

Any equivalent combination of education and experience.

**POSITION TITLE:** Administrative Technician

**SUMMARY:** Works under general supervision. Assists supervisor. Performs administrative duties. Transcribes various material on personal computer. Acts as receptionist. Operates office equipment. Performs other duties as assigned.

**RESPONSIBLE TO:** Supervisor, Permitting, Licensing and Registration Section

**DUTIES AND RESPONSIBILITIES:**

1. Assists Section supervisor. Reads incoming correspondence and retains or routes to supervisor. Gathers files and other pertinent data to facilitate answering of correspondence by supervisor. Answers telephone and provides information for routine questions. Screens calls. Assists supervisor in gathering information for reports and meetings.
2. Types some material from rough draft and form letters.
3. Provide clerical support to the Section staff including the Fee Coordinator.
4. Acts as receptionist for office, greeting and directing callers.
5. Operates office equipment such as photocopier, telefax, and computer with Microsoft applications.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of agency and division document formats.
- Knowledge of filing and document handling procedures.
- Knowledge of business English, spelling, and punctuation.
- Knowledge of business arithmetic.
- Ability to type at least 40 words per minute.
- Ability to operate standard office equipment.
- Ability to use Microsoft software to prepare correspondence, reports, orders and notices of violation.

**QUALIFICATIONS:**

Requirements at this level consist of six months of clerical office experience.

**OR**

An equivalent combination of education and experience, substituting one of the following for the required experience: (a) six months of technical or vocational training course work or high school training in business or office machines; or (b) the completion of 15 semester hours from a college or university.

**POSITION TITLE:** Supervisor, Environmental Program and Policy Section (Environmental Programs Manager)

**SUMMARY:** This position is responsible for water quality protection and management, the public health and environment through the reduction and prevention of point and nonpoint source pollution by analyzing data collected and formulating plans of action.

**RESPONSIBLE TO:** Director, AEMS Division

**DUTIES AND RESPONSIBILITIES:**

1. Coordinates planning activities in support of permit issuance or enforcement programs.
2. Collects data and presents evidence. Testifies as a witness in court cases.
3. Assists other Division professional staff in conducting special studies.
4. Prepares written reports and files on Section's activities.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of the principles of ground and surface water geology, hydrology, or biology.
- Ability to lead a work group consisting of engineers, environmental scientists and administrative personnel.
- Ability to review scientific studies prepared by the Section staff and make recommendations to Division Director as to potential solutions to water quality problems.

**QUALIFICATIONS:**

Requirements at this level consist of a master's degree in a physical, natural, biological, geological or hydrological science, engineering, environmental science, agricultural sciences, environmental health, geography, or related field and three years of professional experience in one of the above areas.

**OR**

A bachelor's degree in one of the above areas and five years of the qualifying experience. Plus additional knowledge of personnel training and planning, and ability to develop, implement and manage programs dealing with large scale problems and two additional years of qualifying experience in an administrative capacity.

**POSITION TITLE:** Environmental Programs Specialist

**SUMMARY:** Responsible for collecting, evaluating and reporting on soil, hydrological, or geological data, reviewing and assisting in the development of Nutrient Management Plans or similar documents; and for evaluating and reporting on water quality monitoring data through scientific expertise in the fields of water quality modeling, hydraulics, hydrology, GIS and soil science.

**RESPONSIBLE TO:** Supervisor, Environmental Program and Policy Section

**DUTIES AND RESPONSIBILITIES:**

1. Reviews water quality standards as related to agricultural activities.
2. Develops or updates ODAFF's Water Quality Standards Implementation Plan.
3. Participates in working groups with other State environmental agencies in developing or updating 305(b) report, 303(d) list, the integrated report (IR), Continuing Planning Process (CPP), and Total Maximum Daily Load (TMDL) program.
4. Attends meetings with public, consultants and other state and federal agencies on water quality management.
5. Collects soil and water samples, evaluates the data and presents in written reports.
6. Assists field inspectors and permit writers in evaluating soil characteristics, nutrient contents and the impact of land application on the watershed.
7. Assists permitting staff on water quality based permit issues and in reviewing CNMPs and NMPs.
8. Assists professional staff in conducting special studies.
9. Assists farmers, growers, and producers in developing Animal Waste Management Plans, CNMPs or NMPs.

**KNOWLEDGE, ABILITIES AND SKILLS:**

- Knowledge of inspection and surveillance equipment and techniques such as soil and water sampling.
- Knowledge of state and federal guidance and requirements on Soil Conservation Practices, Best Management Practices, and Pollution Prevention Plans.
- Knowledge of state and federal pollution control regulations, water quality standards, and restrictions.
- Ability to evaluate inspection and surveillance data to determine compliance with state and federal regulations.
- Ability to prepare Nutrient Management Plans, Comprehensive Nutrient Management Plans, or Animal Waste Management Plans.
- Ability to prepare studies and make recommendations for solutions.

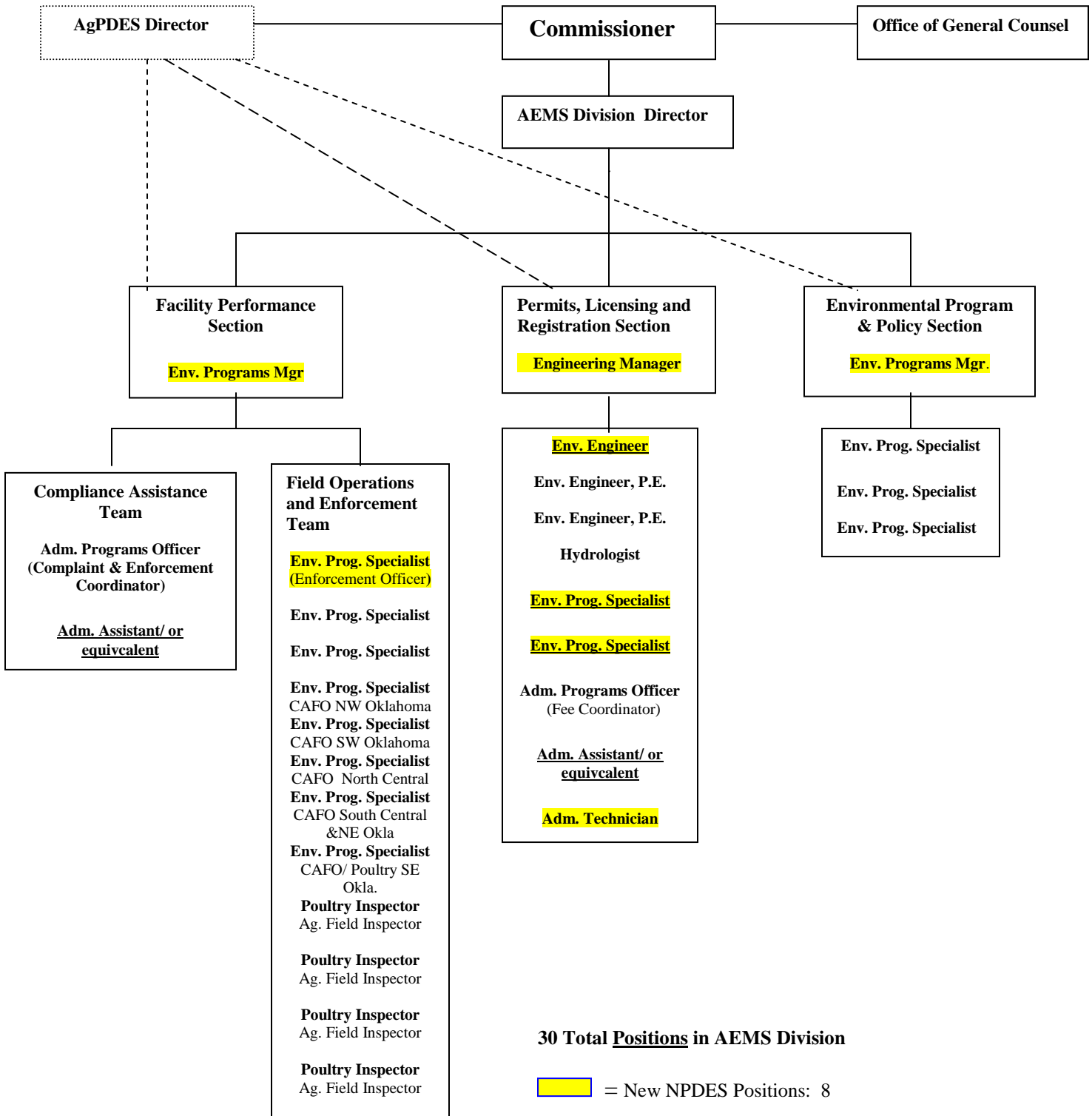
**QUALIFICATIONS:**

Requirements at this level consist of a bachelor's degree with at least 24 semester hours in a physical, natural, or biological science, chemistry, geology, hydrology, physical geography,



epidemiology, environmental science, soil science, agricultural sciences, environmental health or civil, agricultural, environmental, geological or chemical engineering, plus one year of professional experience in one of the areas listed; or a master's degree in a qualifying area.

**FIGURE 5-1. DRAFT ORGANIZATIONAL CHART AEMS DIVISION**



## **PERMITTING PROCEDURES**

### **INTRODUCTION**

The water quality provisions of the Oklahoma Environmental Quality Act provide that pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs beneficial uses of water. It is therefore the public policy of this state to conserve the water of the state and protect, maintain and improve the quality of such water for its legitimate beneficial uses. No waste or pollutant shall be discharged into any waters of the state or otherwise placed in a location likely to affect such waters without first being given the degree of treatment or taking such other measures as necessary to further the prevention, abatement and control of new or existing water pollution.

The primary mechanism used to control pollution from point source discharges to waters of the State is through the issuance of pollutant discharge permits. ODAFF is authorized under Oklahoma law to issue permits that apply and ensure compliance with technology based effluent standards under CWA § 301 and water quality based standards under CWA § 302, as well as any applicable requirements of CWA §§ 306 and 307. The Department has incorporated by reference requirements for establishing limitations, standards, and other permit conditions from 40 C.F.R. § 122.44 in OAC § 35:44-1-2(a)(2)(Q). Permits include other special and standard conditions to prevent, abate, or control pollution and may include schedules of compliance. A sound basis for development of effluent limitations is important to assure that the permit is both reasonable and protective of waters of the state.

### **POINT SOURCE DISCHARGES UNDER AgPDES PROGRAM**

The Department has the necessary jurisdiction to regulate all activities from point sources subject to the AgPDES program, including CAFO, pesticides application, silviculture and storm water from agricultural activities, pursuant to 27A O.S. § 1-3-101(D).

### **TYPES OF PERMITS**

ODAFF is authorized to issue both individual and general permits pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act at 2 O.S. §§ 2A-1 *et seq.*, the Oklahoma Agriculture Environmental Permitting Act at 2 O.S. § 2A-21 *et seq.*, and as further identified in the Statement of Legal Authority for ODAFF's National Pollutant Discharge Eliminations System program issued by the General Counsel for the ODAFF pursuant to 40 C.F.R. § 123.23 (also referred to as the "Attorney General's Statement").

### **GENERAL PERMITS**

ODAFF develops and issues general permits to cover multiple facilities in a specific category of discharges or disposal practices. General permits are issued for a specific period of time not to exceed five (5) years. According to 40 C.F.R. § 122.28(a)(2), which ODAFF has incorporated by reference, general permits are written to cover storm water point sources or other categories of point sources having the following common elements:

- Sources that involve the same or substantially similar types of operations.
- Sources that discharge the same types of wastes or engage in the same types of sludge use or disposal.
- Sources that require the same effluent limitations or operating conditions, or standards for sewage sludge use or disposal.
- Sources that require the same monitoring where tiered conditions may be used for minor differences within a class (e.g., size or seasonal activity).
- Sources that are more appropriately regulated by a general permit.

Where a large number of similar facilities require permits, as is expected for Oklahoma Concentrated Animal Feeding Operations (CAFOs), agriculture construction related storm water dischargers, and pesticide applicators, a general permit allows ODAFF to allocate resources more efficiently and provide permit coverage more timely than issuing individual permits to each facility. Additionally, ODAFF may issue a general permit to ensure consistent permit conditions for comparable facilities.

## **INDIVIDUAL PERMITS**

ODAFF develops an individual permit for a facility on the basis of information from the permit application and other sources (e.g., previous permit requirements, discharge monitoring reports, technology and water quality standards, total maximum daily loads, ambient water quality data, special studies). Individual permits are issued for a specific period of time not to exceed five (5) years, with a requirement for the facility to reapply before the expiration date.

## **COMPONENTS OF A PERMIT**

All AgPDES permits consist of a minimum of five sections:

- Cover Page: Contains the name and location of the permittee, a statement authorizing the discharge, and a listing of the specific locations for which a discharge is authorized.
- Effluent Limitations.
- Monitoring and Reporting Requirements.
- Special Conditions: Conditions developed to supplement numeric effluent limitations, including any additional monitoring activities, special studies, best management practices (BMPs), and compliance schedules.
- Standard Conditions: Preestablished conditions that apply to all AgPDES permits and delineate the legal, administrative, and procedural requirements of the AgPDES permit.

## **AgPDES PERMIT APPLICATION PROCESS**

The NPDES regulations at 40 C.F.R. § 122.21(a) and adopted by reference by ODAFF at OAC § 35:44-1-1 require any person, except persons covered by general permits under 40 C.F.R. § 122.28, who discharges pollutants to waters of the United States must apply for a permit. Further, 40 C.F.R. § 122.21(e) prohibits the permitting authority from issuing an individual permit until and unless a prospective discharger provides a complete application.

ODAFF is responsible for the administrative and technical review of all wastewater and storm water discharge permit applications within its AgPDES jurisdiction; however, AgPDES permits are not required for some activities as specified under the *Exclusions* provision in 40 C.F.R. § 122.3:

- Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 40 C.F.R. § 122.23 and discharges from silvicultural point sources as defined in 40 C.F.R. § 122.27.
- Return flows from irrigated agriculture.

## **DEVELOPING EFFLUENT LIMITATIONS**

AgPDES permits are consistent with state and federal statutes, regulations, and policies. Developing effluent limitations in permits is a multiple step process. The following information is utilized for the preparation of AgPDES permits, as applicable:

- Permit application;
- Existing state and federal wastewater permits;
- Water quality management plans;
- Total Maximum Daily Loads;
- Oklahoma Water Quality Standards and Implementation found at OAC 75:45 and OAC 75:46, respectively;
- ODAFF statutes and rules: AgPDES and Agriculture Environmental Permitting Acts, and AgPDES Rules: OAC 35:44;
- Title 40 Code of Federal Regulations:
  - Part 122 – NPDES Program
  - Part 123 – State Program Requirements
  - Part 124 – Criteria and Standards for NPDES
  - Part 129 – Toxic Pollutant Effluent Standards
  - Part 136 – Test Procedures for Analysis of Pollutants
  - Part 412 – Effluent Limitations Guidelines for Concentrated Animal Feeding Operations (CAFO) Point Source Category

- Part 450 – Effluent Limitations Guidelines for Construction and Development Point Source Category;
- EPA development documents and supporting *Federal Registers*;
- EPA toxic criteria documents;
- EPA *Permit Writer's Manual*, EPA-833-K-10-001;
- EPA *Technical Support Document for Water Quality-based Toxics Control*, EPA-505-2-90-001;
- CAFO publications:
  - NPDES Permit Writers' Guidance Manual for Concentrated Animal Feeding Operations, EPA-833-F-12-001,
  - Code 590 of NRCS Conservation Practice Standard, Nutrient Management, and
  - Managing Manure Nutrients at Concentrated Animal Feeding Operations, EPA-821-B-04-009;
- Construction Storm water publication “Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites,” EPA-833-R-06-004;
- Storm water Phase II Final Rule Fact Sheet Series, found at <http://cfpub.epa.gov/npdes/stormwater/swfinal.cfm>;
- Enforcement orders and compliance inspection reports;
- Self reported effluent data (DMRs); and
- State of Oklahoma Water Quality Inventory (305(b) Report).

## **TECHNOLOGY BASED REQUIREMENTS**

The Oklahoma Agriculture Pollutant Discharge Elimination Act provides that the State Board of Agriculture shall have the power and duty to promulgate rules implementing or effectuating the Oklahoma Agriculture Pollutant Discharge Elimination System (AgPDES) Act. Rules may incorporate by reference any applicable rules, regulations and policies of the United States Environmental Protection Agency (EPA) adopted under the Clean Water Act. Rules shall be in accordance with the EPA regulations and policies, including rules which allow the inclusion of technology based effluent limitations in discharge permits to the extent necessary to comply with the requirements of the Clean Water Act.

## **EFFLUENT LIMITATIONS GUIDELINES (ELGs) AND TREATMENT LEVELS**

Oklahoma rules promulgated at OAC § 35:44-1-2 adopt by reference applicable ELGs found at 40 C.F.R. Parts 401-471 (Effluent Guidelines and Standards). The rule prescribes ELGs for existing sources and standards of performance for new sources. Effluent limitations guidelines include limitations representing the degree of effluent reduction attainable and are implemented through the AgPDES permit program. Discharges from direct dischargers (i.e. facilities that discharge wastewaters directly into waters of the U.S.) are regulated in permits that specify limits using the following treatment levels: Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), Best Available Technology Economically Achievable (BAT), and New Source Performance Standards (NSPS). In cases

where no ELGs are available for a particular pollutant or industrial category, the permit writer uses best professional judgment (BPJ) to establish a site specific technology based limitation. BPT implementation was originally required July 1, 1977 and BPT July 1, 1984. In most cases conventional and nonconventional pollutant levels of treatment required by BCT and BAT are no more stringent than BPT. However BAT includes treatment levels for many toxics not originally included in BPT. Technology based requirements are applied prior to or at the point of discharge.

## **BEST PROFESSIONAL JUDGMENT**

For noncategorical industries, or where there are no ELGs for a particular industrial category (such as Medium or Small CAFOs) the ODAFF permit writer uses Best Professional Judgment (BPJ) in establishing a site specific technology based limitation. BPJ is defined as the highest quality technical opinion developed by a permit writer after consideration of all reasonable available and pertinent data or information that forms the basis for the terms and conditions of an AgPDES permit. BPJ allows the permit writer considerable flexibility in establishing permit terms and conditions. However, inherent in this flexibility is the burden on the permit writer to show that the BPJ is based on sound engineering analysis. The determination of a permit condition is subject to challenge by the permittee and the public, and, if unresolved through negotiation between the parties, may be the subject of an evidentiary hearing or other legal challenge. ODAFF will ensure that the need for a permit condition and any case by case basis for its establishment in accordance with the statutory factors specified in CWA sections 301(b)(2) and 304(b) and listed at 40 C.F.R §125.3(d), are clearly defined and documented).

## **BPT REQUIREMENTS at §304(b)(1)(A) of CWA**

ODAFF implements EPA's Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and nonconventional pollutants using applicable ELGs for permit limitation development. If BPT limitations are set on a case by case basis using BPJ, the permit writer considers certain factors, including:

- the age of equipment and facilities involved,
- the process employed,
- the engineering aspects of the application of various types of control techniques,
- process changes,
- non-water quality environmental impact (including energy requirements), and
- the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application.

## **BCT REQUIREMENTS at §304(b)(4)(A) of CWA**

The 1977 amendments to the CWA require EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing industrial point sources. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids, fecal coliform, pH, oil and grease and any

additional pollutants defined by the Administrator as conventional. ODAFF implements BCT as appropriate through application of ELGs in permits. If setting BCT limitations on a case by case basis using BPJ, the permit writer considers certain factors, including:

- the age of equipment and facilities involved,
- the process employed,
- the engineering aspects of the application of various types of control techniques,
- process changes,
- non-water quality environmental impact (including energy requirements),
- the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived, and
- the evaluation of technology options that are technologically feasible and achieve greater reductions in conventional pollutants than are achieved by the BPT.

#### **BAT REQUIREMENTS at §304(b)(2)(A) of CWA**

In general, Best Available Technology Economically Achievable (BAT) represents the best available economically achievable performance of plants in the industrial subcategory or category. BAT controls the discharge of nonconventional and priority pollutants. In setting BAT limitations on a case by case basis using BPJ, the permit writer considers certain factors, including:

- the age of equipment and facilities involved,
- the process employed,
- the engineering aspects of the application of various types of control techniques,
- process changes,
- non-water quality environmental impact (including energy requirements), and
- the cost of achieving such effluent reduction.

In some cases, toxic pollutants are specifically regulated through effluent guidelines for a particular category and subcategory of the facility. Other toxic pollutants may be present in the discharge at low levels or at levels difficult to quantify because of the difficulty of performing lengthy and expensive analytical procedures. Information in the development documents is used to determine when this is a concern. In some cases an indicator pollutant may be used to effectively control toxic pollutant levels even though the toxics are not expressly regulated by numeric limitations. Where conventional pollutants are used as indicator pollutants for toxic pollutants, BAT limitations for these pollutants are established to assure installation and performance of waste treatment technology that is adequate for the removal of toxic pollutants.

#### **NEW SOURCE PERFORMANCE STANDARDS (NSPS)**

If the permit is for a possible new source as defined by CWA §306 (33 U.S.C. 1316) and 40 CFR § 122.29, ODAFF applies the appropriate NSPS when developing permit conditions. NSPS



reflect effluent reductions that are achievable by direct dischargers based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies at the time of construction. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, nonconventional, and toxic pollutants). A new source is defined in 40 C.F.R. § 122.2 as a building, structure, facility, or installation that discharges pollutants or could discharge pollutants and for which construction began after promulgation of the applicable effluent guidelines or after proposal of the applicable effluent guidelines.

### **WATER QUALITY BASED REQUIREMENTS**

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water, by setting criteria necessary to protect the uses, and by preventing degradation of water quality through antidegradation provisions. When technology based effluent limitations alone do not achieve the applicable Oklahoma Water Quality Standard (OWQS), the Clean Water Act (CWA) and implementing regulations require development of water quality based effluent limitations in permits. ODAFF implements water quality based effluent limitations protect water quality to ensure that water quality standards are met in the receiving water. Water quality based effluent limitations in addition to or more stringent than technology based limits are used in permits pursuant to 40 C.F.R. §122.44(d). Aspects of water quality management leading to requirements in AgPDES permits include state water quality standards, EPA human health criteria not included in state water quality standards, mixing zones, receiving water critical flow, wasteload allocations and total maximum daily loads, effluent flow and whole effluent toxicity.

### **STEPS TO WATER QUALITY BASED PERMITTING**

When writing an AgPDES permit, the permit writer identifies and uses the state water quality standards and implementation developed by Oklahoma Water Resources Board found at OAC 785:45 and 785:46 in effect at the time of permit development. ODAFF permit writers consider the following steps when developing and implementing water quality based effluent limitations:

- Step 1. Determine applicable water quality standards.
- Step 2. Characterize the effluent and receiving water.
- Step 3. Determine the need for water quality based effluent limitations.
- Step 4. Determine reasonable potential and limitations for WET.
- Step 5. Calculate pollutant specific water quality based effluent limitations.
- Step 6. Perform antidegradation review
- Step 7. Determine final effluent limitations.
- Step 8. Apply anti-backsliding requirements.
- Step 9. Establish monitoring, reporting and recordkeeping requirements.

## **STEP 1: DETERMINE APPLICABLE OKLAHOMA WATER QUALITY STANDARDS (OWQS)**

### ***DESIGNATED USES***

Oklahoma Water Quality Standards are codified at OAC 785:45 with implementation at OAC 785:46. OWQS and its implementation are established by Oklahoma Water Resources Board. Recognized beneficial uses of Oklahoma waters include:

- public and private water supply,
- fish and wildlife propagation,
- agriculture,
- primary body contact recreation (such as swimming),
- secondary body contact recreation (such as boating or fishing),
- aesthetics, and
- fish consumption.

For water bodies such as Scenic Rivers (Tier 3 waters) and some municipal water supply lakes (Tier 2 waters) that have quality greater than that required to protect beneficial uses and for water possessing critical habitat for endangered species, the WQS include an antidegradation policy statement that provides more stringent protection and is designed to keep stream water quality from declining.

### ***NUMERIC AND NARRATIVE CRITERIA***

The OWQS specify numeric and narrative criteria to protect beneficial uses designated for certain waters of the State. ODAFF implements in AgPDES permits the numeric and narrative criteria assigned to protect surface water beneficial uses found in OAC 785:45, Subchapter 5. When numeric criteria do not apply, water column conditions including dissolved oxygen concentrations, organoleptic compounds, nutrients, and oil and grease are maintained to prevent nuisance conditions caused by man's activities. Narrative criteria are maintained at all times and apply to all surface waters of the State. If more than one narrative or numeric criteria is assigned to a stream, the most stringent is maintained.

### ***WHOLE EFFLUENT TOXICITY (WET)***

Whole effluent toxicity (WET) testing is to be used to address point source activities which have the reasonable potential for effluent toxicity. WET testing is the most direct measure of potential aquatic toxicity, since it incorporates the effects of synergism of effluent components and receiving stream water quality characteristics. ODAFF uses acute and chronic testing in permits to ensure compliance with the narrative aquatic life toxics criteria of the OWQS, which states that surface waters of the state shall not exhibit acute toxicity and shall not exhibit chronic toxicity outside the chronic regulatory mixing zone. WET tests demonstrating toxicity (including

for sublethal endpoints such as growth and reproduction) that result in an excursion of OWQS shall be used to determine discharger compliance with these criteria.

The rules in OAC 785:46, Subchapter 3, prescribe the method for determining regulatory flow, dilutions required for WET tests, and the method for determining whether there is a reasonable potential to result in an excursion of the narrative criteria for the Fish and Wildlife Propagation beneficial use. Whole effluent toxicity does not require identification of individual toxicity causative agents but subjects test organisms to various effluent dilutions and assesses lethal and/or sublethal responses. The 48 hour acute test is used to protect against acute toxicity in receiving water and the 7 or 21 day chronic test (including for lethal and/or sublethal endpoints) is used to protect against chronic toxicity outside the chronic regulatory mixing zone.

### ***TMDLs AND WQMP***

Development of water quality based effluent limits for pollutants found in the discharge are also consistent with the assumptions and requirements of wasteload allocations (WLA), if any, that have been prepared by the State and approved by EPA through Oklahoma's water quality management planning process pursuant to 40 C.F.R. § 130.6 and the Total Maximum Daily Loads (TMDL) process pursuant to 40 C.F.R. § 130.7.

ODEQ is the lead agency in Oklahoma in charge of conducting and developing TMDLs. ODAFF may request or cooperate with its sister environmental agencies, ODEQ and the Oklahoma Conservation Commission, in developing TMDLs to provide a reasonable, technically sound, consistent procedure for implementing water quality related standards in permits in Oklahoma. TMDLs consider the seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Those waters identified as not meeting any components of water quality standards (CWA 303(d) listed as impaired) require development and implementation of water quality based point and nonpoint source pollution control on water quality standards. A point source discharge is allocated a portion of the allowable load, a WLA; while Load Allocation (LAs) are assigned to nonpoint sources.

ODAFF will also refer to the Oklahoma Water Quality Management Plan (WQMP), for development of permit limitations for facilities within its jurisdiction, if the inventories of the facilities have been included in the WQMP. The Oklahoma WQMP also called the 208 Plan after the Clean Water Act section that established the program, is a comprehensive document aimed at systematically managing water quality in the various watersheds within Oklahoma. The Plan includes an inventory of dischargers within the state. Changes to the 208 Plan are made from time to time as dischargers make modifications to their treatment facilities and as new facilities are constructed. OAC § 785:45-5-12(f)(1) requires that where DO demanding substances are present in an effluent at significant levels, a Wasteload Allocation (WLA) must be established according to certain seasonal criteria dependent on the receiving water's aquatic community subcategory. If the model indicates that a more stringent WLA than secondary is

required to meet these criteria, then the more stringent wasteload allocation (often referred to as a “tertiary” level of treatment) is used once it is granted technical approval by EPA Region 6. It is then promulgated as an amendment to the State WQMP.

### ***SITE SPECIFIC CRITERIA CHANGES***

ODAFF will utilize in permit development any site specific criteria the state has adopted to protect a waterbody or segment of a waterbody. Setting site specific criteria may be appropriate if the state adopts EPA’s CWA section 304(a) criteria recommendations and finds that physical or chemical properties of the water at a site affect the bioavailability or toxicity of a chemical, or the types of local aquatic organisms differ significantly from those actually tested in developing the EPA recommended criteria. Site specific criteria modifications change water quality criteria permanently while continuing to support the current designated uses.

### ***VARIANCES***

Water quality standard variances are changes to water quality standards and have similar substantive and procedural requirements as to what is required to remove a designated use. Unlike use removal, variances are time limited and do not permanently remove the current designated use of a waterbody. Variances are usually discharger and pollutant specific and subject to approval by the Oklahoma Water Resources Board.

Other types of variances are processed in accordance with the requirements of 40 C.F.R. § 124.62, incorporated by reference at OAC § 35:44-1-2(a)(3)(P). For those variances requiring EPA Region 6 or Headquarters consultation and approval, ODAFF conducts an initial review, after which ODAFF contacts EPA Region 6 to discuss the appropriate approval process and anticipated approval timeframe. Any variance granted or denied by ODAFF is subject to EPA objection under 40 C.F.R. § 123.44. A variance typically is granted for a specified period and is reevaluated at least once every three (3) years as reasonable progress is made toward meeting the standards

## **STEP 2: CHARACTERIZE EFFLUENT AND RECEIVING WATER**

Except for temperature, ODAFF uses effluent concentration to characterize effluent to determine if it contains pollutants at levels where there is reasonable potential that instream concentrations exceed criteria established by the state water quality standards. Where available, pollutant levels upstream of the discharge into receiving water are used for assessing reasonable potential and in calculating wasteload allocations. See Appendix A for use specific considerations regarding effluent and receiving water characterization in performing reasonable potential evaluation of exceeding water quality criteria of the receiving streams.

### ***DETERMINING MEASURABLE QUANTITIES – MOST SENSITIVE METHODS AND MINIMUM QUANTIFIABLE LEVELS (MQL’S)***

Measurable levels for effluent and background data are determined utilizing the most sensitive methods available in 40 C.F.R. Part 136—Guidelines for Establishing Test Procedures for the Analysis of Pollutants. EPA Region 6 has established a list of minimum quantifiable levels for use in assessing acceptable analytical sensitivity. The MQL is defined as the lowest concentration at which a particular substance can be quantitatively measurable. Although the listed MQL's are the lowest concentrations required to be used in the calibration of a measurement system, they are not necessarily the minimum acceptable sensitivity. Where a background or effluent concentration data set reflects some measurable and immeasurable levels of a substance at or below the EPA MQL, ODAFF uses a statistical method that computes a regression line to estimate values for nondetect data and combines these estimates with detected observation to compute sample statistics. If specific pollutants are known to be present and pose water quality concerns, the discharger is required to analyze those pollutants by the most sensitive approved method available and determine a site specific quantifiable level that is used in the reasonable potential evaluation.

Where the data used to characterize the effluent and upstream concentration or loading levels is reported as unmeasurable at the minimum quantifiable level, the data is assumed to be zero. Where appropriate data are collected indicating some measurable and unmeasurable quantities, an assumed value of one-half the reported minimum quantifiable level is used for the unmeasurable quantities. If a pollutant is reported as “nondetectable” with a minimum quantifiable level above the MQL, the permit writer assumes that the pollutant is present at the reported level of sensitivity. An opportunity to perform additional analyses may be provided to confirm and quantify actual pollutant levels.

### ***EFFLUENT CHARACTERIZATION***

ODAFF uses effluent concentrations to characterize effluent to determine if there is reasonable potential that discharges violate state water quality standards. Effluent data typically is obtained from permit applications. Discharge Monitoring Report (DMR) data is used only if individual data reports, not monthly averages, are available. Arithmetic mean is calculated if geometric mean cannot be determined.

For effluent temperature characterization, the 95<sup>th</sup> percentile of the daily maximum effluent temperature data set is determined; otherwise, the highest daily maximum effluent temperature is used to calculate reasonable potential.

### ***DILUTION ALLOWANCE AND MIXING ZONES***

Oklahoma Water Quality Standards provide for mixing of effluent and receiving water when determining the need for and calculating water quality based effluent limits. Mixing considerations include a dilution allowance and a regulatory mixing zone. For purposes of permitting discharges for attainment of numeric criteria or establishing site specific criteria, ODAFF utilizes upstream low flow conditions (the greater of 1.0 cfs or 7Q2), upstream long

term average rate or upstream short term average flow rate to determine appropriate permit conditions.

The upstream long term average flow rate is the mean annual flow of the receiving stream. Where flow data published in the USGS publication, Statistical Summaries of Stream Flow in Oklahoma Through 1999 (WRIR 02-4025), by R.L. Tortorelli, is available, minor adjustments for known upstream or downstream perennial flows, as appropriate, may be utilized to estimate the mean annual flow for a specific location upstream or downstream of the USGS gaging station. If published mean annual flow data is not available, it may be approximated by multiplying the receiving water's drainage area at the point of discharge by the mean annual runoff per unit area published in the CPP. An upstream short term average flow rate is used only in the sample standard (SS) agriculture screen and is equal to 0.68 x the upstream long term flow rate.

### ***MIXING ZONE REQUIREMENTS***

Oklahoma's Water Quality Standards define mixing zone and zone of passage requirements for discharge to streams. These requirements vary depending on the designated beneficial use. In general, criteria for toxic substances for fish and wildlife propagation are applied at the edge of mixing zone, and criteria for most other substances are applied after complete mix. Limits to meet criteria for toxic substances for fish and wildlife propagation for a bank outfall point source are usually derived from a zone model that calculates expected pollutant concentrations at the edge of the mixing zone. However, if a discharger uses a diffuser at their outfall such that complete mixing is achieved instream, permit limits could be calculated using a complete mix mass balance model. Documentation showing size, geometry, and an instream study may be required to confirm mixing.

### ***RECEIVING WATER BACKGROUND CHARACTERIZATION***

Where available, the ODAFF includes upstream background levels of substances in assessing the reasonable potential evaluation. Where required, ODAFF calculates a long term average (LTA) background level of a pollutant as a geometric mean unless otherwise specified. Background data is defensible analytical data and is representative of the receiving water's current upstream conditions. The ODAFF uses data collected and reported in accordance with a background monitoring requirements or other water quality databases with adequate and documentable quality assurance procedures. The number and type of upstream samples taken to characterize a particular pollutant are consistent with the critical condition associated with particular standards criteria. Specific factors considered include the frequency, duration, and magnitude of pollutant levels in the receiving water.

## **STEP 3: DETERMINE THE NEED FOR WATER QUALITY BASED EFFLUENT LIMITATIONS**

### ***REASONABLE POTENTIAL***

Each pollutant present in the facility's effluent, for which there are one or more applicable numeric or narrative water quality criteria, is screened against the applicable criteria to determine whether the pollutant has reasonable potential (RP) to exceed any of the criteria. See Appendix A for use specific considerations for determining reasonable potential.

### ***REASONABLE EXPECTATION EVALUATION***

ODAFF determination of "reasonable expectation" for a pollutant to be present in a discharge is the initial step for its reasonable potential evaluation. This generally requires an in depth review of processes and operations performed at a facility. An inventory of raw materials, product, treatment chemicals, and additives is performed to establish the quantity and presence of regulated pollutants and their tendency to be discharged in a stream.

A pollutant can reasonably be expected to be present in the effluent from a facility if effluent limitation guidelines (ELGs) for that pollutant are applicable to discharges from that facility, the pollutant is used as a raw material in a process, created as a final product or byproduct, or added during treatment of process wastewater. Reasonable expectation is met if the facility concentrates naturally occurring pollutants in process operations or wastewater treatment operations.

## **STEP 4: DETERMINE REASONABLE POTENTIAL AND LIMITATIONS FOR WET**

### ***REASONABLE POTENTIAL EVALUATION***

If the reasonable expectation evaluation result is affirmative, ODAFF proceeds to a reasonable potential evaluation based upon particular numeric or narrative water quality standards criteria at those critical conditions in the receiving stream. If the receiving stream is a tributary to a water body with different beneficial uses or water quality standards, those uses and standards are maintained. In cases where multiple criteria apply to a particular pollutant, the most stringent requirement is used as the basis for evaluation.

Factors considered when evaluating the potential for a discharge to violate water quality standards include the following: expected upstream pollutant concentrations and loading, expected effluent pollutant concentration and loading, mixing zone requirements, and overlapping impacts from multiple dischargers. Reasonable potential evaluations are specific to the type of beneficial use being protected. The evaluations consider numeric and narrative criteria for protection of fish and wildlife propagation, human health, public and private water supplies, agriculture, livestock and irrigation, body contact and ingestion, and water body aesthetics.

### ***WHOLE EFFLUENT TOXICITY - REASONABLE POTENTIAL AND LIMITS***

Federal regulations at 40 CFR 122.44(d) (1) require NPDES permitting authorities to determine whether each permitted discharge causes, has the reasonable potential to cause, or contributes to an excursion above a State water quality standard or criterion and include effluent limits controlling the pollutant or pollutant parameters of concern where such reasonable potential is found. This requirement applies to narrative criteria for whole effluent toxicity.

WET testing is required for all major dischargers and those minor dischargers identified by ODAFF as posing a significant unaddressed toxic risk. Reasonable potential to result in an excursion of the narrative criterion to protect the fish and wildlife propagation beneficial use against toxicity exists whenever acute or chronic toxicity is demonstrated. The ODAFF shall deem reasonable potential to be demonstrated whenever acute lethality or chronic lethal and/or sublethality occurs. Reasonable potential is assumed to exist when a known toxicant is present, or expected to be present, in a discharge in toxic amounts that results in an excursion of the State's WQS for WET.

ODAFF will utilize any of three different toxicity monitoring threshold requirements, depending upon dilution capacity of the receiving stream. When the ratio of effluent flow to receiving stream flow, also known as dilution capacity (or in-stream waste concentration [IWC]), is less than 0.054, acute testing only is required. When the ratio of effluent flow to stream flow is greater than 0.33, chronic testing (including sublethal endpoints) only is required. When the ratio of effluent flow to stream flow is greater than or equal to 0.054 and less than or equal to 0.33, both acute and chronic testing (including sublethal endpoints) are required. A discharge directly to a lake requires acute testing only. A 0.75 dilution series is used for all WET testing. Where it is practical to do so, the critical dilution is bracketed so that dose response both above and below the critical dilution is evaluated.

Acute toxicity tests on test organisms are run using a dilution series that accounts for a critical dilution of 100%. Testing for chronic toxicity is performed using dilutions series that reflect the critical dilution where effluent flow is greatest and receiving stream flow is least. Chronic testing and reporting are performed in accordance with EPA-821-R-02-013 (October 2002), or the most recent EPA test method update. Acute testing and reporting follow methods described in EPA Publication No. 821-R-02-012 (October 2002), or the most recent EPA test method update .

If WET testing, also known as biomonitoring, finds reasonable potential for the effluent to exhibit acute lethality or chronic lethal and/or sublethality that results in an excursion of the State's WET WQS, ODAFF includes WET limits or chemical specific numeric limits (if WQS is narrative and if the specific chemical(s) is identified and such limits are sufficient to attain and maintain applicable water quality standards) in the permit in accordance with federal (40 CFR Part 122.44(d)(1)(v)) and state requirements (OAC 785:46, Subchapter 3).

## **STEP 5: CALCULATE WATER QUALITY BASED EFFLUENT LIMITATIONS**



If reasonable potential is exhibited, in accordance with 40 C.F.R. § 122.44(d)(1)(vi), a permit wasteload allocation and criterion long term average is computed for each applicable criterion. In calculating water quality based permit limits, the general approach given in The Technical Support Document of Water Quality-Based Toxic Control, EPA/505/2-90-001, March 1991, is utilized for aquatic life and human health protection. This approach recognizes the variability of both effluent and receiving stream water pollutant levels and uses a statistical method to derive an effluent limitation that meets the requirements of the wasteload allocation (WLA) derived to meet specific water quality criteria. Data used to characterize either the effluent or receiving stream are representative of critical conditions associated with particular standards criteria. Non-representative data or data determined to be inappropriate (i.e., not valid data based on EPA methods test acceptability criteria) is not used in the evaluation process.

Methodology for the development of water quality based permit limitations is scheduled for inclusion in the ODAFF's next updated Water Quality Standard Implementation Plan in 2013. The methodology contains the following:

- Development of permit limitations for the implementation of temperature criteria to protect the fish and wildlife propagation beneficial use.
- Development of permit limitations for the implementation of numeric criteria for toxic substances to protect the fish and wildlife propagation beneficial use.
- Development of permit limitations for the implementation of dissolved oxygen criteria to protect fish and wildlife propagation beneficial use.
- Development of permit limitations for the implementation of human health criteria for conservative substances to protect the fish consumption beneficial use.
- Development of permit limitations for the implementation of human health and raw water criteria for toxic substances to protect the public and private water supply beneficial use.
- Development of permit limitations for the implementation of mineral criteria to protect the agriculture beneficial use.
- Implementation of bacteriological criteria to protect the public and private water supply beneficial use.
- Implementation of bacteriological criteria to protect the primary body contact recreation beneficial use.
- Implementation of criteria to protect the aesthetic beneficial use.

## **STEP 6: PERFORM ANTIDEGRADATION REVIEW**

### ***OKLAHOMA ANTI-DEGRADATION POLICY***

The Oklahoma antidegradation policy and framework stated in OAC § 785:45-3-2 includes all water of the state and affords three tiers or levels of protection. Considerations and restrictions for discharges are described in OAC 785:46, Subchapter 13. Tier 1 protection ensures attainment

or maintenance of an existing or designated beneficial use. Tier 2 protection maintains and protects High Quality Waters (HQW) and Sensitive Public and Private Water Supply waters (SWS). Tier 3 protection provides that no degradation of water quality is allowed in Outstanding Resource Waters (ORW) or Scenic Rivers. The antidegradation policy prohibits an increase in loading that would impair or further impair an existing use and it prohibits degradation of outstanding resource waters and high quality waters, even if existing and designated uses would still be attained. Current CPP procedures regarding the 303(d) list, TMDL's, and loading allocations for both point and nonpoint sources of pollution are consistent with these provisions.

ODAFF permit issuance for discharges to waters of the state is one of several means designed to attain or maintain beneficial uses designated for those waters. The permitting process, not only implements numerical and narrative criteria, but also implements Tier 1 of the antidegradation policy. Another Tier 1 protection for all waters of the state prohibits discharge temperatures greater than 52 degrees Centigrade. Through its AgPDES permit process, ODAFF consistently applies the antidegradation requirements for all waters as well as outstanding resource waters (ORW), high quality waters (HQW), and sensitive public and private water supplies (SWS), or waters of particular ecological or recreational significance.

## **STEP 7: DETERMINE FINAL EFFLUENT LIMITATIONS**

### ***EXPRESSING EFFLUENT LIMITATIONS***

Limits are expressed clearly in the permit so that they are enforceable and unambiguous. All appropriate limits, both chemical specific and whole effluent toxicity, appear in the permit.

### ***MASS BASED EFFLUENT LIMITS***

Mass based effluent limits are required by NPDES regulations at 40 C.F.R. §122.45(f). The regulation requires that all pollutants limited in AgPDES permits have limits, standards, or prohibitions expressed in terms of mass, including pollutants that are not expressed appropriately by mass. Examples of such pollutants are pH, temperature, radiation, and whole effluent toxicity.

### ***CONCENTRATION BASED EFFLUENT LIMITS***

AgPDES permit effluent limitations typically are expressed in terms of both concentration and mass loading. Mass based effluent limits alone may not assure attainment of water quality standards particularly in water with low dilution where effluent concentration rather than the effluent mass discharge dictates the instream concentration.

ODAFF may waive concentration based limits if a discharger can demonstrate that, on a site specific basis, concentration based limits are not appropriate and that sufficient dilution exists to provide an adequate margin of safety to protect the wasteload allocation. For example, the use of concentration limits may be counterproductive, discouraging the use of innovative techniques such as water conservation. ODAFF may determine that it is inappropriate to include

concentration limits where a facility has a history of providing efficient treatment of its wastewater and wishes to practice water conservation. ODAFF considers allowing water quality based permits to be mass based and allowing concentration based limits to vary in accordance with flow reduction requirements to encourage flow reductions and their associated energy savings.

### ***DETECTION LIMITS FOR PERMIT COMPLIANCE***

Where calculated water quality based limits are below the EPA recommended minimum quantifiable level (MQL) for that particular pollutant, a level of compliance is established in the permit based upon the MQL. The water quality based limit will be placed in the permit and, if any analytical test result for the pollutant is less than the MQL, a value of zero is used for monitoring report calculations and reporting requirements. If a pollutant is of particular concern (i.e., if the pollutant has a high bioconcentration factor), an effluent specific method detection limit requires development. Additional requirements such as fish tissue collection and analyses, limits and monitoring requirements on internal waste streams, and limits and monitoring for surrogate parameters may also be required in the permit.

### **STEP 8: APPLY ANTIBACKSLIDING REQUIREMENTS**

The procedures for developing a permit WLA for water quality based permit limits normally result in new or more stringent water quality based limits than those contained in a previously issued permit. In a limited number of cases, however, it is conceivable that less stringent water quality based limits could result. In these cases, permit limits will conform to existing federal regulations governing antibacksliding where issuance of permit limits that are less stringent than those contained in an existing permit is generally prohibited unless certain criteria are met.

### **STEP 9: ESTABLISH MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS**

#### ***MONITORING FREQUENCY***

Monitoring frequency for water quality based limits developed to protect State's aquatic life protection criteria (WET WQS including acute and chronic endpoints), or human health criteria is typically a minimum of ten samples per month. ODAFF determines monitoring frequency on a case specific basis for each discharger. A number of factors are considered in establishing monitoring frequency. These factors include:

- The type of treatment process, including retention time.
- Environmental significance and nature of the pollutant or pollutant parameter.
- Cost of monitoring relative to the discharger's capabilities and benefit obtained.
- Compliance history.
- Number of monthly samples used in developing the permit limit.

- Effluent variability.

Typically, for conservative pollutants, quarterly sampling for five years (a minimum of 20 data points) is required to characterize upstream background pollutant levels. In those situations in which limited background concentration information is available, a margin of safety of not less than 20% is used in allocating wasteloads for a particular segment. In addition, a requirement is included in the permit to perform instream monitoring to confirm the allocation. A reopener clause is also included so the permit can be modified or revoked and reissued if the data indicates an excursion of water quality standards.

### **SPECIAL PERMIT CONDITIONS APPLICABLE TO ANY TYPE OF DISCHARGER**

#### **BEST MANAGEMENT PRACTICES (BMPs)**

Many ODAFF issued permits include BMP requirements. BMPs are defined as permit conditions used in place of or in conjunction with effluent limitations to prevent or control the discharge of pollutants. BMPs include a schedule of activities, prohibition of practices, maintenance procedure, or other management practices.

Sections 304(e), 308(a), 402(a), and 501(a) of the CWA authorize BMPs as part of effluent limitations guidelines and standards or as part of a permit. EPA's BMP regulations are found at 40 C.F.R. § 122.44(k). Section 304(e) of the CWA authorizes EPA to include BMPs in effluent limitations guidelines for certain toxic or hazardous pollutants for the purpose of controlling "plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage." Section 402(a)(1) and 40 C.F.R. § 122.44(k) also provide for BMPs to control or abate the discharge of pollutants when numeric limitations and standards are infeasible.

#### **COMPLIANCE SCHEDULES**

A compliance schedule allowing no more than three years to complete any additional treatment plant construction or facility modifications necessary to meet a water quality based limit may be included in the permit for existing facilities. When a compliance schedule is granted in the permit, it is consistent with requirements of 40 C.F.R. § 122.47 and with EPA's existing policy stated in the May 10, 2007 Memorandum from James Hanlon, then-Director, EPA Office of Wastewater Management, entitled, "Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits." New facilities, or existing facilities proposing increased production or changes in operation resulting in the discharge of new pollutants or increased levels of existing pollutants, must meet the water quality based limit at start up.

### **PERMIT ISSUANCE ADMINISTRATIVE PROCESS**

All AgPDES permit applications are subject to a Tier I, Tier II or Tier III process and designation under the Oklahoma Agriculture Environmental Permitting Act and rules promulgated by the Board. The requirements for Tier II and Tier III meet all the federal requirements contained in 40 C.F.R. Part 122 (EPA Administered Permit Programs: The National Pollutant Discharge Elimination System), 40 C.F.R. Part 124 (Procedures for Decision Making) and 40 C.F.R. Part 25 (Public Participation).

When an AgPDES permit application is received by ODAFF, it is date stamped and routed to the Administrative Assistant, who assigns a permit number to the application, enters it into the database, tags the number into the Permit Event Log Book, and then forwards it to the AEMS Division Director. The AEMS Division Director assigns the application to technical staff within the Permits, Licensing and Registration Section for reviews. The technical staff evaluates the application and any additional information submitted for administrative and technical completeness pursuant to the requirements of the Oklahoma Agricultural Code and rules, and, when necessary, requests changes, revisions, corrections, and supplemental submissions.

Once a Tier I application is determined complete, the Engineering Manager of the Permits, Licensing and Registration Section issues an authorization or denies the application. Generally, a Notice of Intent (NOI) for coverage under a general permit is a Tier I application; however an NOI for coverage under a CAFO general permit is a Tier II application and allows public participation in the review of the NOI and Nutrient Management Plan.

Upon conclusion of its technical review of a Tier II or III application and within the time frames established by rules promulgated by the Board, ODAFF prepares a fact sheet or a statement of basis, and draft permit or draft denial. Notice of a draft permit is given by the applicant and notice of a draft denial is given by the ODAFF. The procedures outlined in this chapter are followed to determine the appropriate terms and conditions of the draft permit. After the technical staff prepares the draft permit package for Tier II or Tier III application, it is forwarded for review to the Engineering Manager of the Permits, Licensing and Registration Section and to the AgPDES Director.

In addition to publishing notice of the draft permit and draft denial, the Tier II permitting process also includes public notice of an opportunity for a formal public meeting. The ODAFF promptly schedules and holds a formal public meeting if a timely written request for the meeting on the draft denial or draft permit is received. The meeting is not a quasi-judicial proceeding.

For draft permits or draft denials for Tier II applications where no comment or public meeting request was received in a timely manner and where no public meeting was held, the final permit is issued or denied.

For draft permits or draft denials for Tier II applications where comment or a public meeting request was received in a timely manner or where a public meeting was held, the ODAFF prepares a response to comments and issues the draft as is, as amended, or makes final denial.

For Tier III applications, the notice of application filing also includes a notice of an opportunity for a process meeting, as defined in the Agriculture Environmental Permitting Act. After the public comment period and public meeting, the ODAFF prepares a response to any comments received in a timely manner and either issues a final denial or prepares a proposed permit as defined in the Act. When a proposed permit is prepared, the applicant publishes notice of the tentative decision of ODAFF to issue a permit. The permit also offers a twenty working day opportunity to request an administrative hearing to participate as a party. The opportunity to request a hearing is available to the applicant and any person or qualified interest group that may be affected by the proposed facility. The hearing is a quasi-judicial proceeding and is conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture.

If the ODAFF by the end of twenty (20) working days after the publication date of the notice receives no written administrative hearing request, the final permit is issued. If the final decision of ODAFF is to deny the permit, it gives notice to the applicant and issues the final denial in accordance with the Act.

When an administrative hearing is requested in a timely manner on a proposed permit, all timely requests are combined in a single hearing. The ODAFF moves to an evidentiary proceeding in which parties have the right to present evidence before the ODAFF on whether the proposed permit and the information provided are in substantial compliance with applicable provisions of the Oklahoma Agriculture Code and rules and whether the proposed permit should be issued as is, amended and issued, or denied.

Upon final issuance or denial for a Tier III application, the ODAFF provides public notice of the final permit decision and the availability of the response to comments. Any appeal of a Tier III final permit decision or any final order connected to it is made in accordance with the provisions of the Oklahoma Agricultural Code and the Administrative Procedures Act. Any appeal is limited to the participants of the administrative proceeding.

### **PERMIT ISSUANCE AND APPEALS**

The Oklahoma Agriculture Environmental Permitting Act outlines the permitting process. Rules promulgated under this Act:

- Enable applicants to follow a consistent application process;
- Ensure that uniform public participation opportunities are offered;
- Provide for uniformity in notices required of applicants;
- Set forth procedural application requirements; and
- Contain specific uniform requirements for each type of notice and public participation or hearing opportunities required by the Oklahoma Agriculture Environmental Permitting Act.

## APPENDIX A to Chapter 6:

### OK WATER QUALITY STANDARDS – REQUIREMENTS FOR CALCULATING NUMERICAL CRITERIA

DESIGNATED USE	POLLUTANT	POINT OF APPLICATION OF CRITERIA	STREAM FLOW FOR RP CALC	BACKGROUND CONCENTRATION USED	EFFLUENT DATA for RP CALC
Public & Private Water Supply	Raw Water	After Complete Mix	Long Term Avg Stream Flow	Long Term Average, the expected upstream value is calculated as the arithmetic mean of the upstream data set.	The critical effluent flow is the arithmetic and/or geometric mean of all measured daily discharges using a period of record of not less than two years.
Public & Private Water Supply	Radioactive Materiel	End of Pipe	0	See Raw Water	See Raw Water
Public & Private Water Supply	Total Coliform	End of Pipe	0	See Raw Water	See Raw Water
Public & Private Water Supply	Water Colum for consumption of fish flesh and water	After Complete Mix	Long Term Avg Stream Flow	The average mean annual flow for the period of record.	See Raw Water
Public & Private Water Supply	Chlorophyll-a	0.5 m below surface (Wister Lake, Tenkiller Ferry Reservoir, SWS designated waters)	Long Term Avg Stream Flow		Applicable to specific waterbodies
Public & Private Water Supply	Phosphorous	0.5 m below surface (Lake Eucha, Spavinaw Lake)	Long Term Avg Stream Flow		Applicable to specific waterbodies
Fish and Wildlife Propagation	Dissolved Oxygen	In stream, seasonal adjustments	7Q2 or 1 cfs if no data		
Fish and Wildlife Propagation	Temperature	After Complete Mix (Outside mix zone)	Not Applicable – record of data accounting for seasonal fluctuations		For agro-industrial facilities, the regulatory effluent flow for temperature is the highest 30-day average flow in the most recent two-year period of record. Geo mean is preferred.
Fish and Wildlife Propagation	pH (6.5-9)	End of Pipe	0		
Fish and Wildlife Propagation	Toxics	After Complete Mix (At edge of mixing zone )	7Q2 or 1 cfs if no data		For agro-industrial facilities, the regulatory effluent flow for toxics is the highest 30-day average flow in the most recent two-year period of record. Geo means is preferred.
Fish and Wildlife Propagation	Turbidity	In stream	Not applicable		

**APPENDIX A to Chapter 6:****OK WATER QUALITY STANDARDS – REQUIREMENTS FOR CALCULATING NUMERICAL CRITERIA**

DESIGNATED USE	POLLUTANT	POINT OF APPLICATION OF CRITERIA	STREAM FLOW FOR RP CALC	BACKGROUND CONCENTRATION USED	EFFLUENT DATA for RP CALC
Agriculture	Chlorides, Sulfides, Total Dissolved Solids	After Complete Mix	Long Term Avg Stream Flow		
Agriculture	Chlorides, Sulfides, Total Dissolved Solids	After Complete Mix	Short term Avg		
Primary Body Contact	Bacteria	End of Pipe	0		
Aesthetics	Color	After complete mix	7Q2 or 1 cfs if no data		Critical effluent flow is usually calculated as the highest 30-day average flow occurring in the most recent two-year period of record.

**CRITERIA FOR PUBLIC AND PRIVATE WATER SUPPLIES**

The quality of the surface waters of the state which are designated as public and private water supplies shall be protected, maintained, and improved when feasible, so that the waters can be used as sources of public and private raw water supplies. These waters shall be maintained so that they will not be toxic, carcinogenic, mutagenic, or teratogenic to humans. Criteria is found at OAC **785:45-5-10**, and includes:

- Raw water numerical criteria;
- Bacteria numeric criteria;
- Radioactive materials criteria;
- Water Column criteria to protect for the consumption of fish flesh and water;
- Oil and grease (petroleum and non-petroleum related) narrative criteria, and
- Chlorophyll-a and Phosphorus numerical criterion are applicable to certain waters.

For agro-industrial facilities, the regulatory effluent flow for human health/fish flesh and water criteria is usually calculated as the arithmetic mean of all measured effluent daily discharges using a period of record of not less than two years. Allowances should be made to account for expected fluctuations in production and resulting discharge levels over the life of the permit.



## **APPENDIX A to Chapter 6:**

### **OK WATER QUALITY STANDARDS – REQUIREMENTS FOR CALCULATING NUMERICAL CRITERIA**

Raw water numerical criteria are average values not to be exceeded instream. For the purposes of performing reasonable potential evaluation for these pollutants when there is a reasonable expectation that they are present in the effluent, the expected upstream value is calculated as the arithmetic mean of the upstream data set.

Water column criteria for the consumption of fish flesh and water are long term average values. For the purposes of performing reasonable potential evaluations for these pollutants when there is a reasonable expectation that they are present in the effluent, the expected value is calculated as the long-term average of the upstream data set.

The critical upstream flow is the greater of 1.0 cubic feet per second (cfs) or  $7Q_2$ , except for water column criteria to protect the consumption of fish flesh and water, for which the critical flow is a long term average. This long-term average is calculated as the average mean annual flow for the period of record.

### **NUMERICAL CRITERIA FOR FISH & WILDLIFE PROPAGATION**

The narrative and numerical criteria to maintain and protect the use of "Fish and Wildlife Propagation" and its subcategories are found at OAC **785:45-5-12** and include criteria for:

- **Dissolved oxygen;**
- **Temperature;**
- **pH;**
- **Oil and grease (petroleum and non-petroleum related);**
- **Toxic substances (for protection of fish and wildlife).**
- **Turbidity**
- **Sediments**

Acute and chronic criteria for toxics are maximum values never to be exceeded instream. Water column criteria to protect human health for the consumption of fish flesh are considered long term standards.

## **APPENDIX A to Chapter 6:**

### **OK WATER QUALITY STANDARDS – REQUIREMENTS FOR CALCULATING NUMERICAL CRITERIA**

For agro-industrial facilities, the regulatory effluent flow for toxics or temperature is the highest 30-day average flow occurring in the most recent two-year period of record.

Geometric means are preferred and will be calculated if sufficient data points are available. If geometric mean cannot be determined, the arithmetic mean will be used. If a significant seasonal variability in effluent flow is present, a seasonal regulatory effluent may be calculated for a particular season of the year. Allowances should be made to account for expected fluctuation in production and resulting discharge levels over the life of the permit.

Numerical criteria for Toxic Substances are maximum values not to be exceeded instream. For the purposes of performing reasonable potential evaluation for these pollutants when there is a reasonable expectation that they are present in the effluent, the expected upstream value is calculated as the arithmetic mean of the upstream data set.

#### **NUMERICAL CRITERIA FOR FISH CONSUMPTION**

In accordance with Oklahoma regulations found at **785:45-5-20**, the surface waters of the state shall be maintained so that toxicity does not inhibit ingestion of fish and shellfish by humans. Water column criteria to protect human health for the consumption of fish flesh are considered long term standards. For the purposes of performing reasonable evaluations for these pollutants, when there is a reasonable expectation that they are present in the effluent the expected effluent value is calculated as the maximum likelihood estimator of the upper 95<sup>th</sup> percentile of the effluent data set. For the purposes of permitting discharges for attainment of these criteria, long term average receiving stream+ flows and complete mixing of effluent and receiving water to determine appropriate permit limits will be used.

The critical effluent flow for human health criteria is usually calculated as the arithmetic and/or geometric mean of all measured daily discharges using a period or record of not less than two years. Arithmetic and/or geometric means are calculated wherever there are

## **APPENDIX A to Chapter 6:**

### **OK WATER QUALITY STANDARDS – REQUIREMENTS FOR CALCULATING NUMERICAL CRITERIA**

two or more data points. Geometric means are preferred and will be calculated if sufficient data points are available. If geometric mean cannot be determined, the arithmetic mean will be used. Allowance should be made to account for expected fluctuation in production and resulting discharge levels over the life of the permit.

#### **NUMERICAL CRITERIA FOR AGRICULTURE**

The surface waters of the State shall be maintained so that toxicity does not inhibit continued ingestion by livestock or irrigation of crops. Numeric criteria for mineral constituents (chlorides, sulfates and total dissolved solids) necessary for protection of Irrigation and Livestock Agriculture uses are found at OAC **785:45-5-13**.

For agro-industrial facilities, the critical effluent flow is usually calculated as the arithmetic mean of all measured effluent daily discharges using a period of record of not less than two years. If a significant seasonal variability in flow is present, a seasonal critical effluent flow may be calculated for a particular season of the year. Allowances should be made to account for expected fluctuations in production and resulting discharge levels over the life of the permit.

Numerical criteria for mineral constituents (chlorides, sulfates and total dissolved solids) are statistical measures of ambient levels present in specified water body segments in the state. Segment averages are used to evaluate reasonable potential unless more appropriate site-specific data is available. For the purposes of performing reasonable potential evaluations of these pollutants when there is a reasonable expectation that they are present in the effluent, the expected effluent value is calculated as the arithmetic mean of the effluent data set.

The critical upstream flow is a long-term average flow for implementing the yearly mean standard and short-term average flow for implementing the sample standard.

**NUMERICAL CRITERIA FOR PRIMARY BODY CONTACT RECREATION**

Numeric and narrative criteria for the protection of Primary Body Contact Recreation use are found at OAC **785:45-5-16**. Criteria ensures that waters of the state where direct body contact with the possibility of ingestion exists shall not contain chemical, physical or biological substances in concentrations that are irritating to skin or sense organs or are toxic or cause illness upon ingestion by human beings. Numerical criteria for enteric bacteria (Coliform, Escherichia coli, or Enterococci) are geometric mean values never to be exceeded instream, and are applied during the “recreational” season of May through September.

Since the Oklahoma Water Quality Standards (OWQS) do not specify a mixing zone for enteric bacteria criteria, they are applied end-of-pipe. Therefore, reasonable potential is presumed to exist when there is a reasonable expectation that enteric bacteria are present in the effluent.

Numerical criteria for bacteria (Coliform, Escherichia coli, or Enterococci) are geometric mean values. For the purposes of performing reasonable potential evaluations for these pollutants when there is a reasonable expectation that they are present in the effluent, the expected upstream value is calculated as the geometric mean of the upstream data set.

The critical upstream flow is the greater of 1.0 cfs or  $7Q_2$ .

**NUMERICAL CRITERIA FOR THE AESTHETICS USE**

Numeric and narrative criteria for the protection of the Aesthetics use are found at OAC **785:45-5-19**. Surface waters of the state must be free from floating materials and suspended substances that produce objectionable color and turbidity. The water must also be free from noxious odors and tastes, from materials that settle to form objectionable deposits, and discharges that produce undesirable effects or are a nuisance to aquatic life. The OWQS includes numerical criteria for:

## APPENDIX A to Chapter 6:

### OK WATER QUALITY STANDARDS – REQUIREMENTS FOR CALCULATING NUMERICAL CRITERIA

- Color
- Nutrients; **numerical criterion applicable to waters designated Scenic Rivers**

Numerical criteria for color are values never to be exceeded instream solely as a result of effluent color levels. For the purposes of performing reasonable potential evaluations for these pollutants when there is a reasonable expectation that they are present in the effluent, the expected effluent value is calculated as the maximum likelihood estimator of the upper 95<sup>th</sup> percentile of the effluent data set, measured as “true” color.

For agro-industrial facilities, the critical effluent flow is usually calculated as the highest 30-day average flow occurring in the most recent two-year period of record. If a significant seasonal variability in flow is present, a seasonal critical effluent flow may be calculated for a particular season of the year. Allowances should be made to account for expected fluctuations in production and resulting discharge levels over the life of the permit.

Effluent characterization for determining reasonable potential will be based on the arithmetic and/or geometric means. Geometric means are preferred if sufficient individual data points are available. If the geometric means cannot be determined, the arithmetic means will be used.

Numerical criteria for color are values never to be exceeded instream. For the purposes of performing reasonable potential evaluations for these pollutants when there is a reasonable expectation that they are present in the effluent, the expected upstream value is calculated as the arithmetic mean of the upstream data set.

The critical upstream flow is the greater of 1.0 cfs or  $7Q_2$ .

## **INTRODUCTION**

This Chapter outlines various opportunities for public involvement and participation available in connection with the AgPDES program managed by ODAFF.

## **PUBLIC PARTICIPATION IN THE PERMITTING PROCESS**

All AgPDES permit applications are designated as Tier I, Tier II or Tier III applications pursuant to the Oklahoma Agriculture Environmental Permitting Act and rules promulgated by the Board. Opportunities for public participation in the permitting process vary according to Tier, with Tier I applications offering minimal opportunity for public participation and Tier III offering opportunities for public participation beyond what federal regulations require. A chart referencing the various tiers and types of permits that fall under each tier is included as Appendix 7-1.

Under the Oklahoma Agriculture Environmental Permitting Act, Tier I means a basic process of permitting that includes application for a permit or for an NOI seeking coverage under a general permit, notice of the application or NOI to the landowner who owns the property where the permitted activity will take place, and ODAFF review. Because ODAFF's definition of "permit" is broader than the federal definition, Tier I includes applications for authorizations not considered permits under the federal NPDES program, including Notices of Intent (NOIs) for coverage under general permits, other than the CAFO general permit. Because Tier I does not include federal NPDES permits, Tier I applications are not subject to federal permitting requirements. Permits issued under Tier II and Tier III meet all federal requirements for State issued NPDES permits contained in 40 CFR Part 25 (Public Participation), 40 CFR Part 122 (EPA Administered Permit Programs: The National Pollutant Discharge Elimination System), and 40 CFR Part 124 (Procedures for Decision Making).

Tier I includes applications for changes to individual discharge permits or changes to authorizations to discharge under general permits that would constitute "minor modifications" under 40 CFR § 122.63 (incorporated by reference at OAC 35: 44-1-2). Tier 1 also includes applications for new or renewed authorizations to discharge under general permits other than a CAFO general permit and applications for major modifications to an authorization to discharge under any general permit other than a CAFO general permit. It should be noted that changes to a Nutrient Management Plan (which is part of a CAFO permit) require a separate public notice and participation process under 40 C.F.R. 122.42(e)(6)(ii) (incorporated by reference at OAC 35: 44-1-2). Once it is determined that the Tier I application is complete, the assigned technical supervisor or a local representative, if authorized by ODAFF, either issues an authorization or denies the application.

Under the AgPDES program an NOI for coverage under a general permit is normally considered a Tier I application. However, an NOI for coverage under a CAFO general permit is considered a Tier II application due to the public participation requirements for NOIs and nutrient

management plans arising out of Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2d Cir. 2005) and incorporated into EPA's 2008 final CAFO rule. *See* 73 Fed. Reg. 70418 (November 20, 2008). In accordance with that decision and EPA's permitting requirements for CAFOs set out at 40 C.F.R. § 122.23, ODAFF reviews NOIs submitted by CAFO owners or operators to ensure that the NOI includes the information required by 40 C.F.R. § 122.21(i)(1), including a nutrient management plan that meets the requirements of 40 C.F.R. § 122.42(e) and applicable effluent limitations and standards. ODAFF incorporates 40 C.F.R. §§ 122.23, 122.21(i)(1) and 122.42(e) into state rules by reference. Once ODAFF makes a preliminary determination that an NOI meets the applicable requirements, ODAFF makes the NOI available for review and public comment, including the nutrient management plan attached to the NOI, and the draft terms of the nutrient management plan to be incorporated into the permit. Per the Oklahoma Open Records Act, the public may request hard copies of the documents and pay a fee for the service, currently at \$0.25 per page. The public notice, opportunity for public comment, opportunity to request a hearing and any hearing, if held, follow the same procedures and requirements applicable to other Tier II draft permits as discussed below.

Tier II includes applications for new or renewed authorizations to discharge under a CAFO general permit and applications for major modification of an authorization to discharge under a CAFO general permit. All new general permits as well as applications to modify or renew existing general permits are also subject to the requirements for Tier II applications. In addition, Tier II covers applications for new individual discharge permits for small and medium CAFOs and all non-major facilities other than CAFOs. Tier II also covers applications for renewal of or major modification to all individual discharge permits, including individual CAFO permits.

Upon filing with ODAFF, Tier II applications are public noticed by the applicant as a legal notice in one daily or weekly newspaper of general circulation local to the proposed new site or existing facility. Local is analogous to the federal standard of area affected in accordance with 40 CFR § 124.10(c)(2)(i), as further discussed in the Statement of Legal Authority. Upon conclusion of the technical review of a Tier II application, ODAFF prepares a fact sheet or a statement of basis, and draft permit or draft denial. Public notice of a draft permit is given by the applicant and notice of a draft denial is given by ODAFF. ODAFF publishes public notices for the general permits it develops. The notice identifies public locations where the draft denial or draft permit may be viewed, including a public location in the county where the proposed new site or existing facility is located, and will provide a minimum of thirty (30) days for public comment and an opportunity to request a public meeting on the draft denial or draft permit. Per Open Records Act, public may request for hard copies of the documents (Statement of Basis or Fact sheet and Draft Permit) and pay a fee for the service, currently at \$0.25 per page.

ODAFF promptly schedules and holds a formal public meeting if it receives a timely written request for a public meeting on the draft denial or draft permit. For Tier II draft permits or draft denials on which public comments or a public meeting request is received in a timely manner or on which a public meeting is held, ODAFF considers all comments received, prepares a response to comments document and issues or denies the final permit accordingly.

For Tier II draft permits or draft denials on which no comment or public meeting request is received in a timely manner and on which no public meeting is held, the final permit is issued or denied.

Tier III includes applications for new individual discharge permits for large CAFOs and major non-CAFO facilities, as well as any other applications for new individual discharge permits not covered by Tier II. Issuance or denial of Tier III permits follows the same process used for Tier II permits, except that the process for Tier III permits includes additional opportunity for public participation. For Tier III applications, the notice of application filing includes a notice of an opportunity for a process meeting on the permitting process as defined in the Agriculture Environmental Permitting Act found at 2 O.S. §§ 2A-21 *et seq.* After the public comment period and formal public meeting, the Division prepares a response to any comments received in a timely manner and either issues a final denial or prepares a proposed permit as defined in the Act.

When a proposed permit is prepared pursuant to Tier III process, the applicant publishes notice as a legal notice in one newspaper of general circulation local to the proposed site or existing facility of the tentative decision of ODAFF to issue a permit. ODAFF provides public notice of general permits under the Tier II process. The notice identifies the locations where the proposed permit and the response to comments may be reviewed, including a public location in the county where the facility is located. When a proposed permit is prepared on a Tier III application, ODAFF also provides an opportunity for the applicant and any person or qualified interest group that alleges that the operation may have a direct, substantial, and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group to request and participate in a quasi-judicial hearing conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agriculture Code, and rules promulgated by the State Board. “Qualified interest group” is defined under 2 O.S. § 2A-22(6) of the Oklahoma Agriculture Permitting Act as “any organization with twenty-five or more members who are Oklahoma residents.” The issue of Oklahoma standing and opportunity to seek judicial review and consistency with 40 C.F.R. § 123.27(d) is more fully discussed in the Statement of Legal Authority.

If, by the end of twenty (20) working days after the publication date of the notice, ODAFF receives no written administrative hearing request, the final permit is issued. If the final decision is to deny the permit, ODAFF gives notice to the applicant and issues the final denial in accordance with the Act.

When an administrative hearing is requested in a timely manner on a proposed permit, all timely requests are combined into a single hearing. An evidentiary proceeding is promptly scheduled in which parties have the right to present evidence before the Division on whether the proposed permit and the information provided are in substantial compliance with applicable provisions of



the Oklahoma Agriculture Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

Upon final issuance or denial of a Tier III permit, ODAFF provides public notice of the final permit decision and the availability of the response to comments. Any appeal of a Tier III final permit decision or any final order connected to it is made in accordance with the provisions of the Oklahoma Agricultural Code and the Administrative Procedures Act. Any appeal is limited to the participants of the administrative proceeding. A full discussion of the judicial review process and its consistency with 40 C.F.R. § 123.27(d) is contained in the Statement of Legal Authority.

### **PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS**

In accordance with 40 C.F.R. § 123.27(d)(1), public participation in the State enforcement process is made available by allowing intervention as of right in any civil or administrative enforcement action by any citizen having an interest which is or may be adversely affected. 2 O.S. § 2A-9(C) of the Oklahoma Statutes states:

Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any health, environmental, pecuniary, or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

Any person against whom an administrative compliance or penalty order is issued may obtain review of the order by filing a petition for review in district court pursuant to the Oklahoma Administrative Procedures Act. This right to intervention is broad enough to comply with the requirements of 40 C.F.R. § 123.27(d), which provides that States administering the NPDES program shall provide for public participation in the State enforcement process through one of two options, including intervention as of right by any citizen having an interest which is or may be adversely affected. See 40 C.F.R. § 123.27(d)(1). This is more fully discussed in the Statement of Legal Authority.

### **RULEMAKING**

Public participation is required and encouraged in the rulemaking process through providing public notice of proposed rulemaking, opportunity to comment in writing at a rulemaking hearing or at the Board meeting and the Board considers proposals and comments, votes on recommendations and adopts rules in accordance with the Administrative Procedures Act (APA). The APA, 75 O.S. § 303 et seq. requires public participation in rulemaking activities for all permanent rules through public notice in the Oklahoma Register. Permanent rules are defined as rules promulgated pursuant to the process identified in 75 O.S. § 303. Permanent rules are rules

that once promulgated can only be revoked through a subsequent rulemaking action and are distinguished from emergency rules. Emergency rules are temporary in nature and once passed, automatically expire on a date certain. For at least thirty (30) days after publication of the notice of the intended rulemaking action, interested parties are afforded a comment period to submit data, views or arguments, either orally or in writing. Pursuant to 75 O.S. § 30(C)(1), if the published notice does not already provide for a hearing, ODAFF schedules a hearing on a proposed rule, if, within thirty (30) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

- a. at least ten persons,
- b. a political subdivision,
- c. an agency,
- d. an association having at least twenty-five (25) members, or
- e. the Small Business Regulatory Review Committee.

As a matter of course, ODAFF always schedules a public hearing on all permanent rulemakings.

### **PUBLIC FORUMS AND MEETINGS**

In addition to public forums and meetings held by ODAFF, the Board also conducts regular public forums and meetings open to the public under Oklahoma's Open Meetings Act. During each regular or special meeting of the Board, there is typically an opportunity for members of the public to make comments on the record concerning agenda items prior to any vote. The Board is authorized to conduct public forums in addition to the usual meetings which primarily relate to rulemakings. An effort is made to schedule meeting and public forums at representative locations throughout the state.

### **COMPLAINTS AND DATA MANAGEMENT**

Guidelines and computerized systems for recording and analyzing information about complaints is utilized by ODAFF and information resulting from this process is subject to disclosure to the public, including other agencies, pursuant to Oklahoma's Open Records Act. The complaint system is designed to direct complaints to the appropriate state agency with jurisdiction over the subject matter, to produce a timely response to each complaint and to document the resolution of the complaint. Efforts are also underway to computerize and manage data on a geographical information system (GIS) for all permitting activities in the state.

### **AVAILABILITY OF RECORDS TO THE PUBLIC**

In Oklahoma, there are few exceptions available to a state agency under which records may be withheld from public inspection under the Open Records Act. With respect to the AgPDES program, the issue of availability of information is specifically addressed by 2 O.S. § 2A-7(D) as follows:

1. Any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the record, report, or information, or particular portion, shall be considered confidential in accordance with the purposes of the federal Uniform Trade Secrets Act.
2. Nothing in this section shall prohibit ODAFF or an authorized representative of ODAFF including, but not limited to, any authorized contractor, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal laws under their respective jurisdictions or within their respective authorities.
3. Any records, reports, or information required to be submitted for permitting, compliance, or review that would not be considered confidential by the Environmental Protection Agency shall not be kept confidential pursuant to this subsection. Per the Oklahoma Open Records Act, the public may request hard copies of the documents and pay a fee for service, currently at \$0.25 per page.

Appendix 7-1  
**Tier I, Tier II and Tier III Permit Applications**

<b>TIER</b>	<b>ACTIVITY</b>	<b>ACTION</b>
<b>Tier I</b>	<p>Authorizations for coverage under general permits except for CAFO general permits, and major modifications to authorizations for coverage under general permits except for CAFO general permits;</p> <p>Minor modifications to permits or authorizations, including any transfer of ownership or operational control of a facility, or any administrative amendment to a permit or authorization, including the correction of typographical errors.</p>	<p>ODAFF administratively processes. Public notice is not required. Notice of application or NOI to landowner who owns the property where the permitted activity will take place is provided.</p>
<b>Tier II</b>	<p>New individual permits for minor facilities, including small and medium CAFOs;</p> <p>All individual permit, including individual CAFO permits, renewals and major modifications;</p> <p>New general permits, including CAFO general permits, and any major modification to or renewal of a general permit;</p> <p>New authorization for coverage under CAFO general permits and major modifications to authorizations for coverage under CAFO general permits.</p>	<p>Applicant publishes legal notice of application for individual permit or major modification in local newspaper,</p> <p>Applicant gives notice of application to land owners in the vicinity of the facility;</p> <p>ODAFF sends draft permit and either fact sheet or statement of basis (SOB) to EPA for review;</p> <p>ODAFF emails public notice of draft permit action to interested parties and as required by 40CFR 124.10(c)(1);</p> <p>ODAFF sends hard copies of draft permit, and either fact sheet or SOB to applicant;</p> <p>Applicant publishes notice of availability of the draft permit or authorization and makes permit documents available for public review;</p>

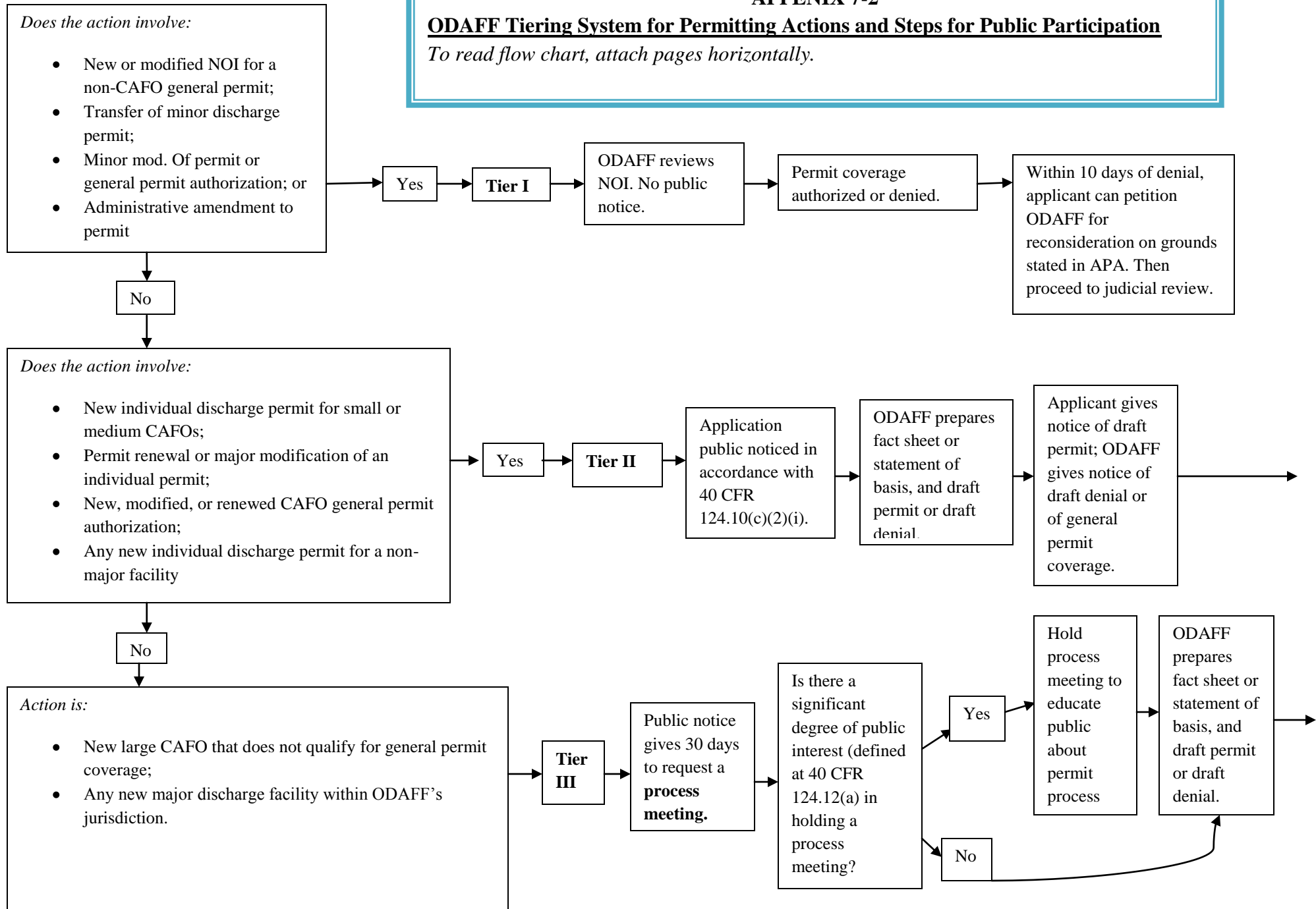
		<p>ODAFF publishes public notice on its web site.</p> <p><u>For general permits:</u> ODAFF places legal notice of the draft permit in state-wide newspapers, and makes draft permit documents available for public review;</p> <p>ODAFF holds public meeting or hearing on draft permit;</p> <p>ODAFF responds to comments, if any, and issues or denies the permit;</p> <p>Appeal of the permit issuance or denial, if requested.</p>
<b>Tier III</b>	New individual permits for major facilities, including large CAFOs.	<p>ODAFF holds process meeting at local area near the proposed facility, if requested;</p> <p>Applicant places legal notice of application in local newspaper;</p> <p>Applicant sends notice of application to land owner owning the property where the permitted activity will take place in the vicinity of the facility;</p> <p>ODAFF sends draft permit and fact sheet to EPA for review;</p> <p>ODAFF emails public notice of draft permit action to interested parties and as required by 40CFR 124.10(c)(1);</p> <p>ODAFF sends hard copies of draft permit and fact sheet to applicant;</p> <p>Applicant publishes notice of the draft permit and makes permit documents available for public review;</p> <p>ODAFF publishes public notice on its</p>

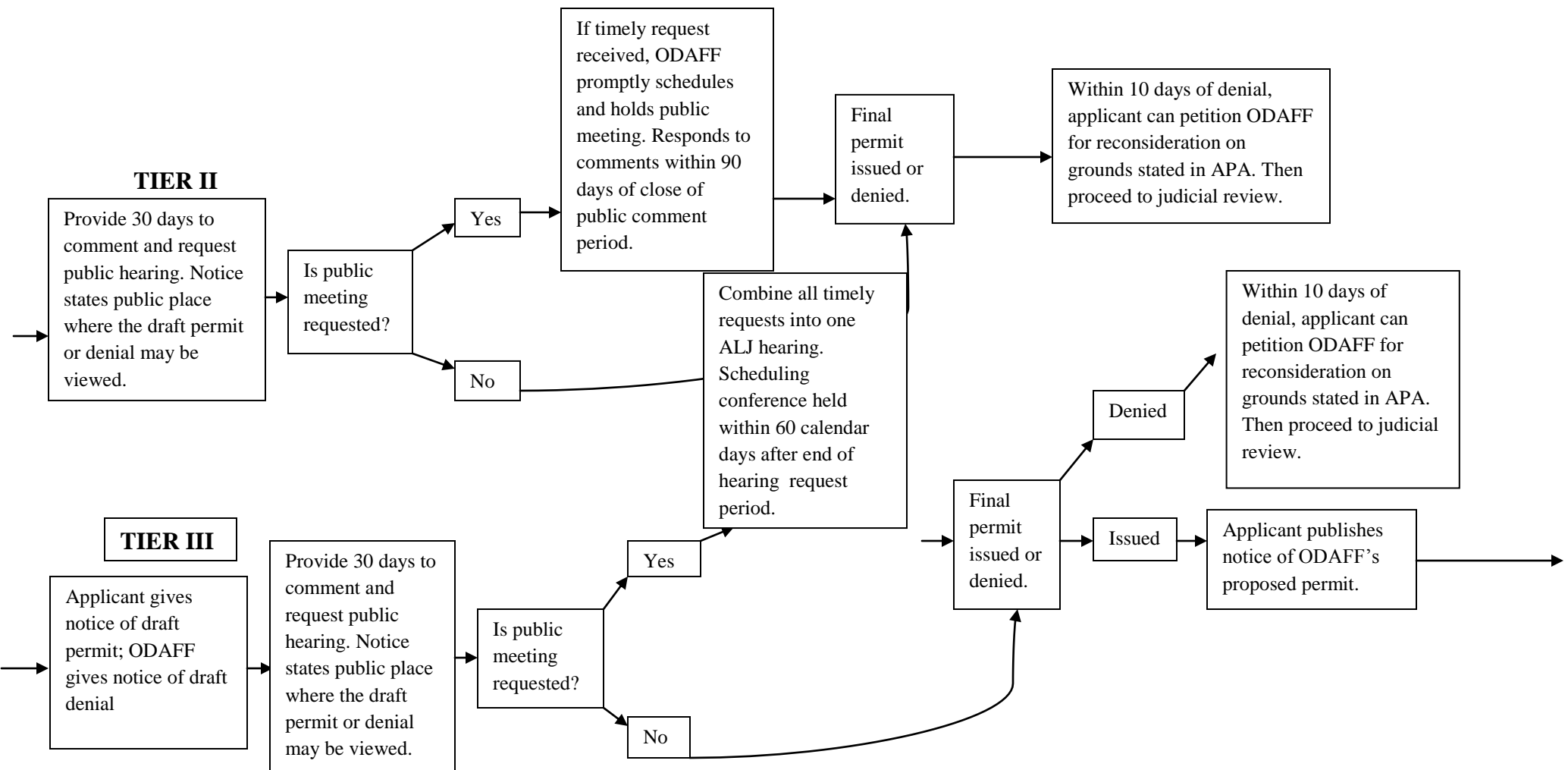
		<p>web site.</p> <p>ODAFF holds public meeting or hearing on draft permit;</p> <p>ODAFF prepares response to comments and either denies permit or prepares a proposed permit;</p> <p>If proposed permit is prepared, ODAFF sends proposed permit and responses to comments, if any, to applicant and EPA;</p> <p>Applicant publishes notice of the proposed permit and makes the permit &amp; and related documents available for public review;</p> <p>ODAFF holds administrative hearing, if requested;</p> <p>ODAFF issues or denies final permit;</p> <p>Appeal of the permit issuance or denial, if requested.</p>
--	--	---

## APPENIX 7-2

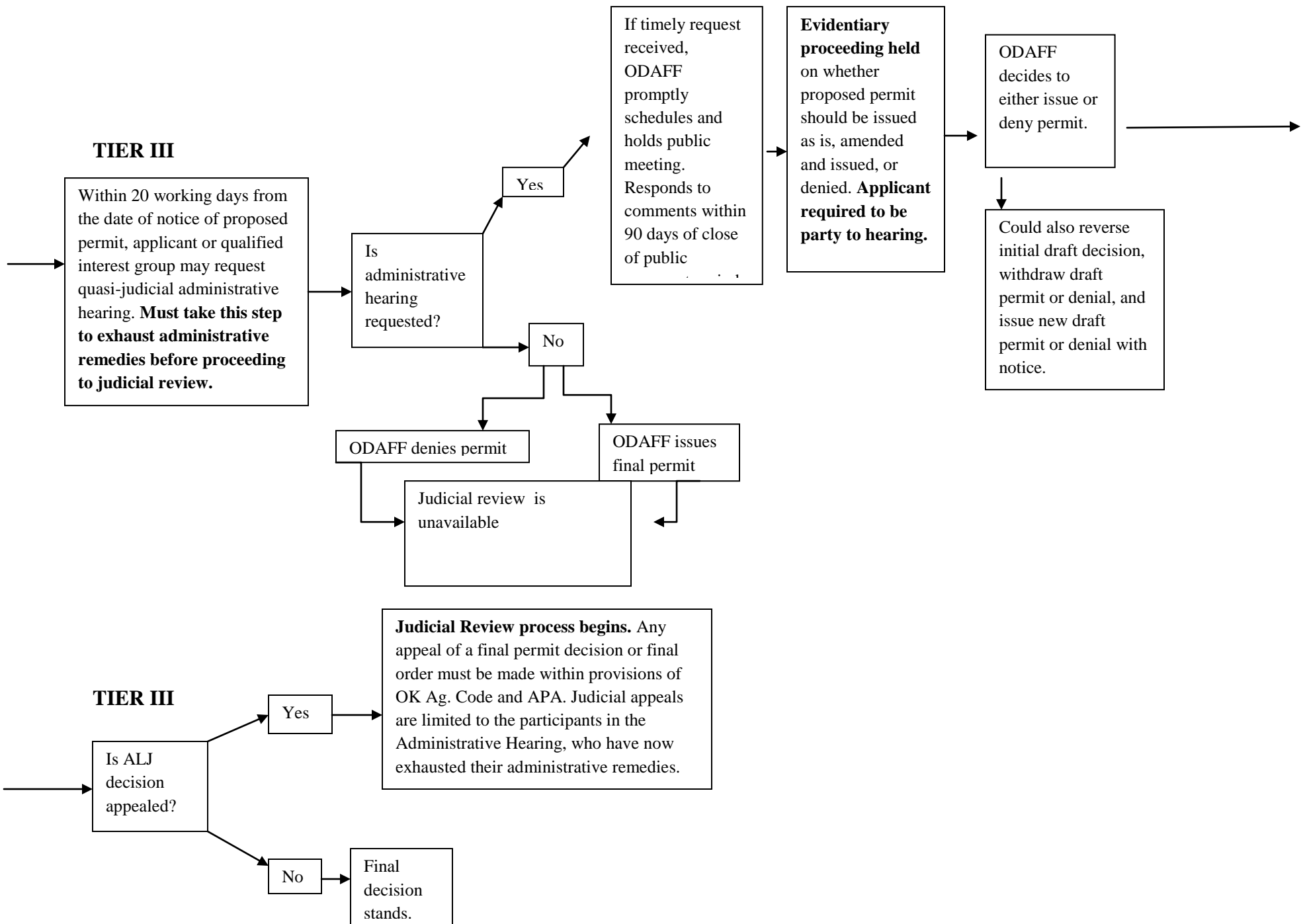
### ODAFF Tiering System for Permitting Actions and Steps for Public Participation

*To read flow chart, attach pages horizontally.*





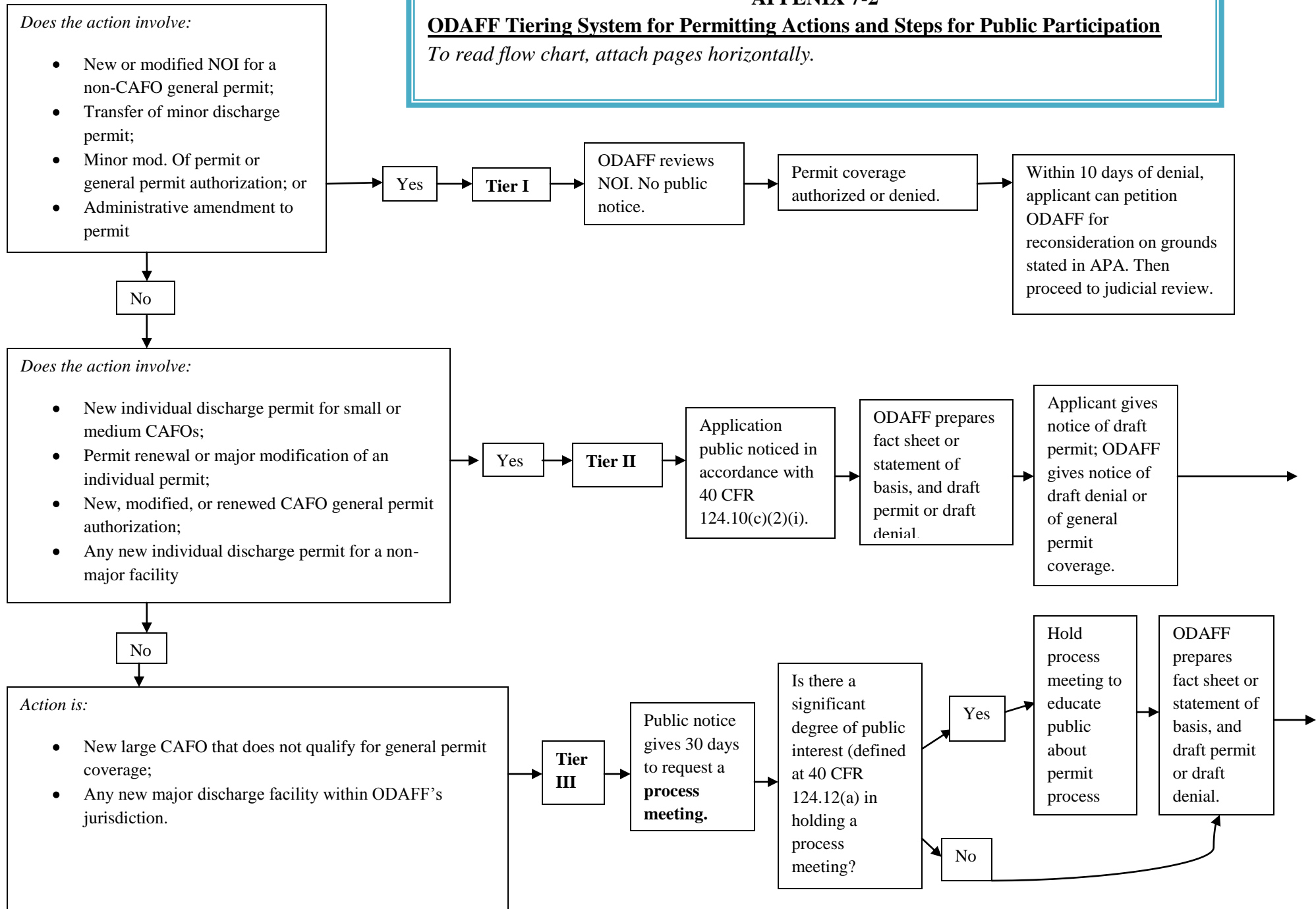


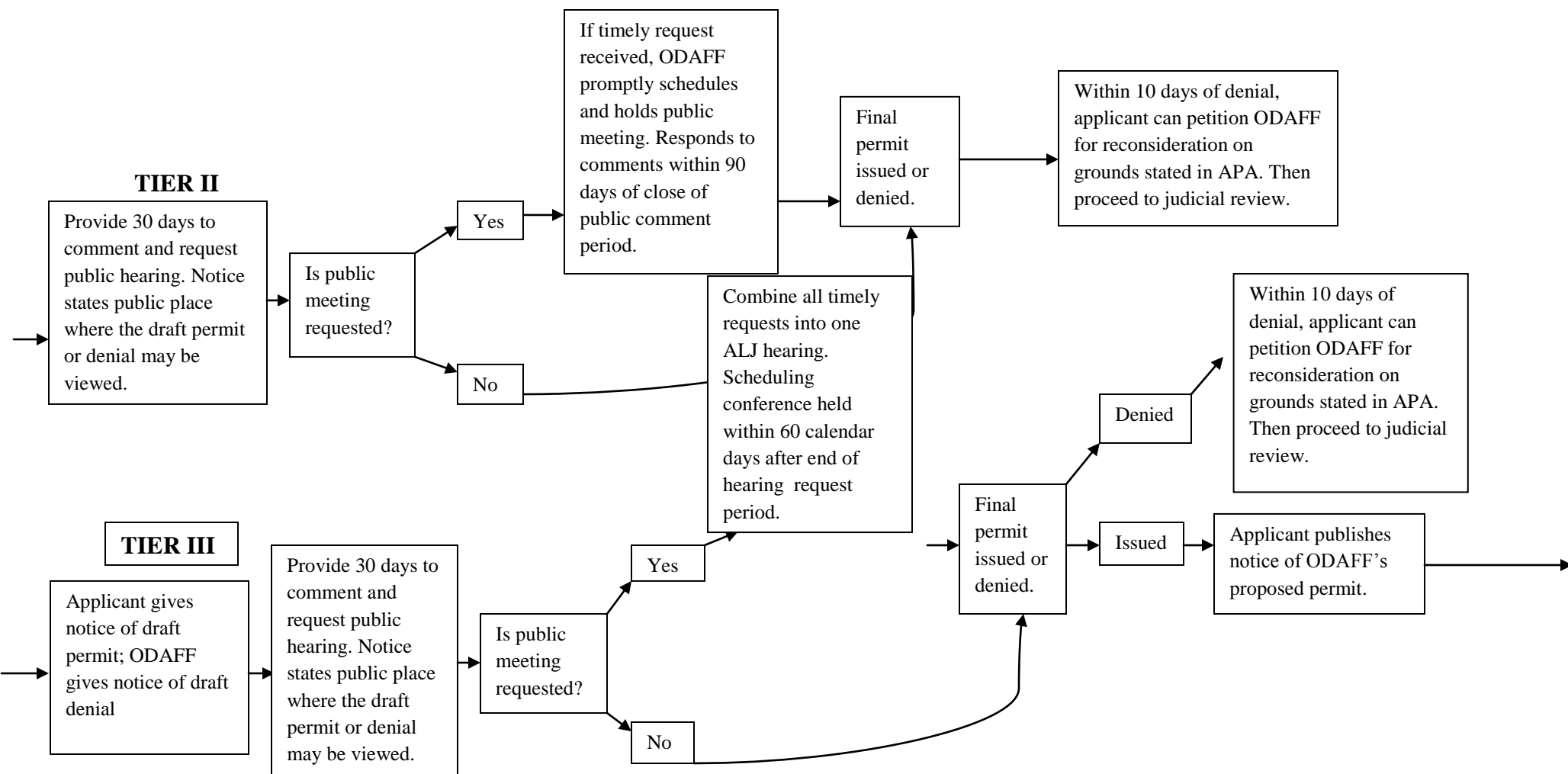


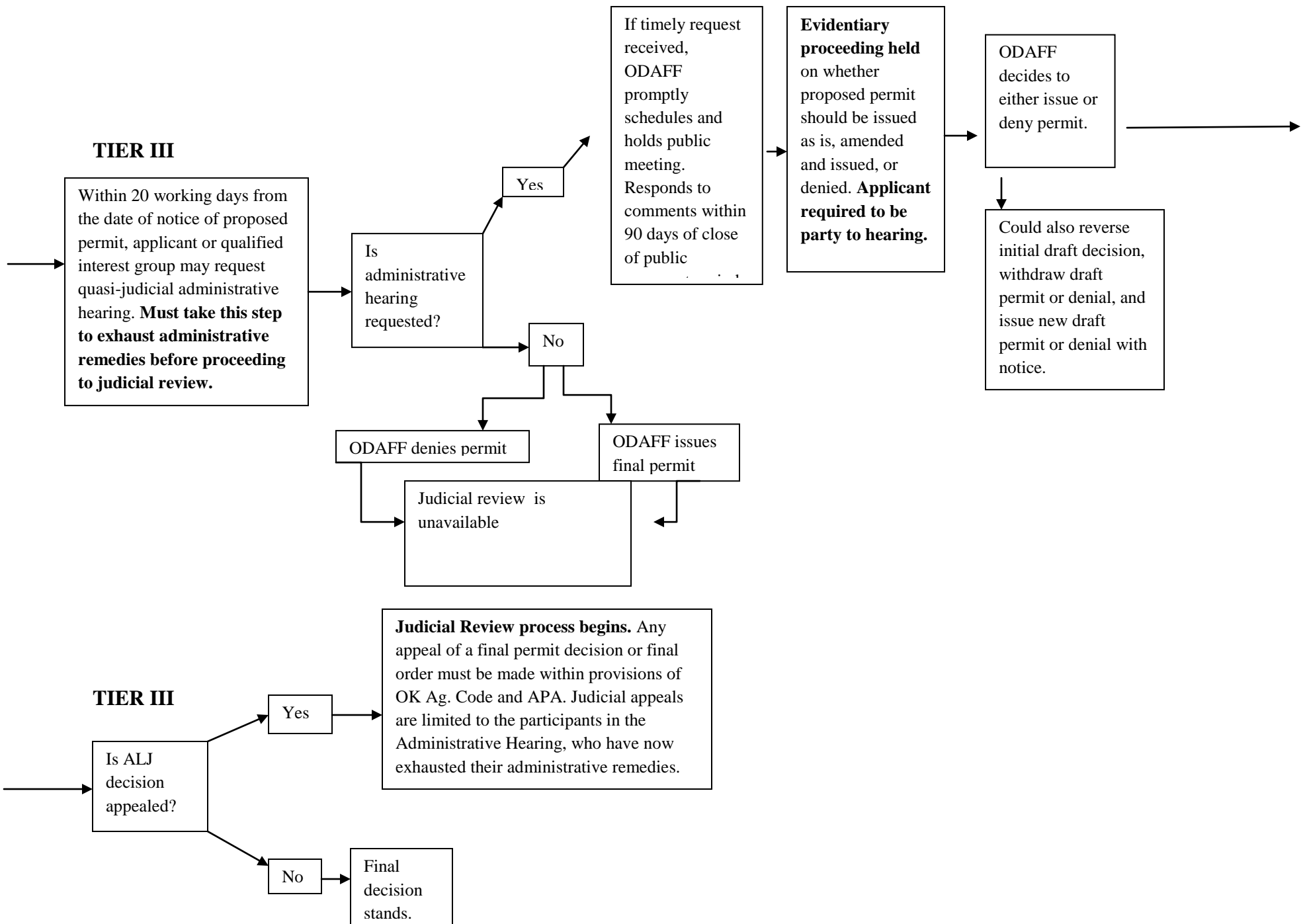
## APPENIX 7-2

### ODAFF Tiering System for Permitting Actions and Steps for Public Participation

*To read flow chart, attach pages horizontally.*







## **INTRODUCTION**

This Chapter outlines various opportunities for public involvement and participation available in connection with the AgPDES program managed by ODAFF.

## **PUBLIC PARTICIPATION IN THE PERMITTING PROCESS**

All AgPDES permit applications are designated as Tier I, Tier II or Tier III applications pursuant to the Oklahoma Agriculture Environmental Permitting Act and rules promulgated by the Board. Opportunities for public participation in the permitting process vary according to Tier, with Tier I applications offering minimal opportunity for public participation and Tier III offering opportunities for public participation beyond what federal regulations require. A chart referencing the various tiers and types of permits that fall under each tier is included as Appendix 7-1.

Under the Oklahoma Agriculture Environmental Permitting Act, Tier I means a basic process of permitting that includes application for a permit or for an NOI seeking coverage under a general permit, notice of the application or NOI to the landowner who owns the property where the permitted activity will take place, and ODAFF review. Because ODAFF's definition of "permit" is broader than the federal definition, Tier I includes applications for authorizations not considered permits under the federal NPDES program, including Notices of Intent (NOIs) for coverage under general permits, other than the CAFO general permit. Because Tier I does not include federal NPDES permits, Tier I applications are not subject to federal permitting requirements. Permits issued under Tier II and Tier III meet all federal requirements for State issued NPDES permits contained in 40 CFR Part 25 (Public Participation), 40 CFR Part 122 (EPA Administered Permit Programs: The National Pollutant Discharge Elimination System), and 40 CFR Part 124 (Procedures for Decision Making).

Tier I includes applications for changes to individual discharge permits or changes to authorizations to discharge under general permits that would constitute "minor modifications" under 40 CFR § 122.63 (incorporated by reference at OAC 35: 44-1-2). Tier 1 also includes applications for new or renewed authorizations to discharge under general permits other than a CAFO general permit and applications for major modifications to an authorization to discharge under any general permit other than a CAFO general permit. It should be noted that changes to a Nutrient Management Plan (which is part of a CAFO permit) require a separate public notice and participation process under 40 C.F.R. 122.42(e)(6)(ii) (incorporated by reference at OAC 35: 44-1-2). Once it is determined that the Tier I application is complete, the assigned technical supervisor or a local representative, if authorized by ODAFF, either issues an authorization or denies the application.

Under the AgPDES program an NOI for coverage under a general permit is normally considered a Tier I application. However, an NOI for coverage under a CAFO general permit is considered a Tier II application due to the public participation requirements for NOIs and nutrient

management plans arising out of Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2d Cir. 2005) and incorporated into EPA's 2008 final CAFO rule. *See* 73 Fed. Reg. 70418 (November 20, 2008). In accordance with that decision and EPA's permitting requirements for CAFOs set out at 40 C.F.R. § 122.23, ODAFF reviews NOIs submitted by CAFO owners or operators to ensure that the NOI includes the information required by 40 C.F.R. § 122.21(i)(1), including a nutrient management plan that meets the requirements of 40 C.F.R. § 122.42(e) and applicable effluent limitations and standards. ODAFF incorporates 40 C.F.R. §§ 122.23, 122.21(i)(1) and 122.42(e) into state rules by reference. Once ODAFF makes a preliminary determination that an NOI meets the applicable requirements, ODAFF makes the NOI available for review and public comment, including the nutrient management plan attached to the NOI, and the draft terms of the nutrient management plan to be incorporated into the permit. Per the Oklahoma Open Records Act, the public may request hard copies of the documents and pay a fee for the service, currently at \$0.25 per page. The public notice, opportunity for public comment, opportunity to request a hearing and any hearing, if held, follow the same procedures and requirements applicable to other Tier II draft permits as discussed below.

Tier II includes applications for new or renewed authorizations to discharge under a CAFO general permit and applications for major modification of an authorization to discharge under a CAFO general permit. All new general permits as well as applications to modify or renew existing general permits are also subject to the requirements for Tier II applications. In addition, Tier II covers applications for new individual discharge permits for small and medium CAFOs and all non-major facilities other than CAFOs. Tier II also covers applications for renewal of or major modification to all individual discharge permits, including individual CAFO permits.

Upon filing with ODAFF, Tier II applications are public noticed by the applicant as a legal notice in one daily or weekly newspaper of general circulation local to the proposed new site or existing facility. Local is analogous to the federal standard of area affected in accordance with 40 CFR § 124.10(c)(2)(i), as further discussed in the Statement of Legal Authority. Upon conclusion of the technical review of a Tier II application, ODAFF prepares a fact sheet or a statement of basis, and draft permit or draft denial. Public notice of a draft permit is given by the applicant and notice of a draft denial is given by ODAFF. ODAFF publishes public notices for the general permits it develops. The notice identifies public locations where the draft denial or draft permit may be viewed, including a public location in the county where the proposed new site or existing facility is located, and will provide a minimum of thirty (30) days for public comment and an opportunity to request a public meeting on the draft denial or draft permit. Per Open Records Act, public may request for hard copies of the documents (Statement of Basis or Fact sheet and Draft Permit) and pay a fee for the service, currently at \$0.25 per page.

ODAFF promptly schedules and holds a formal public meeting if it receives a timely written request for a public meeting on the draft denial or draft permit. For Tier II draft permits or draft denials on which public comments or a public meeting request is received in a timely manner or on which a public meeting is held, ODAFF considers all comments received, prepares a response to comments document and issues or denies the final permit accordingly.

For Tier II draft permits or draft denials on which no comment or public meeting request is received in a timely manner and on which no public meeting is held, the final permit is issued or denied.

Tier III includes applications for new individual discharge permits for large CAFOs and major non-CAFO facilities, as well as any other applications for new individual discharge permits not covered by Tier II. Issuance or denial of Tier III permits follows the same process used for Tier II permits, except that the process for Tier III permits includes additional opportunity for public participation. For Tier III applications, the notice of application filing includes a notice of an opportunity for a process meeting on the permitting process as defined in the Agriculture Environmental Permitting Act found at 2 O.S. §§ 2A-21 *et seq.* After the public comment period and formal public meeting, the Division prepares a response to any comments received in a timely manner and either issues a final denial or prepares a proposed permit as defined in the Act.

When a proposed permit is prepared pursuant to Tier III process, the applicant publishes notice as a legal notice in one newspaper of general circulation local to the proposed site or existing facility of the tentative decision of ODAFF to issue a permit. ODAFF provides public notice of general permits under the Tier II process. The notice identifies the locations where the proposed permit and the response to comments may be reviewed, including a public location in the county where the facility is located. When a proposed permit is prepared on a Tier III application, ODAFF also provides an opportunity for the applicant and any person or qualified interest group that alleges that the operation may have a direct, substantial, and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group to request and participate in a quasi-judicial hearing conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agriculture Code, and rules promulgated by the State Board. “Qualified interest group” is defined under 2 O.S. § 2A-22(6) of the Oklahoma Agriculture Permitting Act as “any organization with twenty-five or more members who are Oklahoma residents.” The issue of Oklahoma standing and opportunity to seek judicial review and consistency with 40 C.F.R. § 123.27(d) is more fully discussed in the Statement of Legal Authority.

If, by the end of twenty (20) working days after the publication date of the notice, ODAFF receives no written administrative hearing request, the final permit is issued. If the final decision is to deny the permit, ODAFF gives notice to the applicant and issues the final denial in accordance with the Act.

When an administrative hearing is requested in a timely manner on a proposed permit, all timely requests are combined into a single hearing. An evidentiary proceeding is promptly scheduled in which parties have the right to present evidence before the Division on whether the proposed permit and the information provided are in substantial compliance with applicable provisions of

the Oklahoma Agriculture Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

Upon final issuance or denial of a Tier III permit, ODAFF provides public notice of the final permit decision and the availability of the response to comments. Any appeal of a Tier III final permit decision or any final order connected to it is made in accordance with the provisions of the Oklahoma Agricultural Code and the Administrative Procedures Act. Any appeal is limited to the participants of the administrative proceeding. A full discussion of the judicial review process and its consistency with 40 C.F.R. § 123.27(d) is contained in the Statement of Legal Authority.

### **PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS**

In accordance with 40 C.F.R. § 123.27(d)(1), public participation in the State enforcement process is made available by allowing intervention as of right in any civil or administrative enforcement action by any citizen having an interest which is or may be adversely affected. 2 O.S. § 2A-9(C) of the Oklahoma Statutes states:

Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any health, environmental, pecuniary, or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

Any person against whom an administrative compliance or penalty order is issued may obtain review of the order by filing a petition for review in district court pursuant to the Oklahoma Administrative Procedures Act. This right to intervention is broad enough to comply with the requirements of 40 C.F.R. § 123.27(d), which provides that States administering the NPDES program shall provide for public participation in the State enforcement process through one of two options, including intervention as of right by any citizen having an interest which is or may be adversely affected. See 40 C.F.R. § 123.27(d)(1). This is more fully discussed in the Statement of Legal Authority.

### **RULEMAKING**

Public participation is required and encouraged in the rulemaking process through providing public notice of proposed rulemaking, opportunity to comment in writing at a rulemaking hearing or at the Board meeting and the Board considers proposals and comments, votes on recommendations and adopts rules in accordance with the Administrative Procedures Act (APA). The APA, 75 O.S. § 303 et seq. requires public participation in rulemaking activities for all permanent rules through public notice in the Oklahoma Register. Permanent rules are defined as rules promulgated pursuant to the process identified in 75 O.S. § 303. Permanent rules are rules



that once promulgated can only be revoked through a subsequent rulemaking action and are distinguished from emergency rules. Emergency rules are temporary in nature and once passed, automatically expire on a date certain. For at least thirty (30) days after publication of the notice of the intended rulemaking action, interested parties are afforded a comment period to submit data, views or arguments, either orally or in writing. Pursuant to 75 O.S. § 30(C)(1), if the published notice does not already provide for a hearing, ODAFF schedules a hearing on a proposed rule, if, within thirty (30) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

- a. at least ten persons,
- b. a political subdivision,
- c. an agency,
- d. an association having at least twenty-five (25) members, or
- e. the Small Business Regulatory Review Committee.

As a matter of course, ODAFF always schedules a public hearing on all permanent rulemakings.

### **PUBLIC FORUMS AND MEETINGS**

In addition to public forums and meetings held by ODAFF, the Board also conducts regular public forums and meetings open to the public under Oklahoma's Open Meetings Act. During each regular or special meeting of the Board, there is typically an opportunity for members of the public to make comments on the record concerning agenda items prior to any vote. The Board is authorized to conduct public forums in addition to the usual meetings which primarily relate to rulemakings. An effort is made to schedule meeting and public forums at representative locations throughout the state.

### **COMPLAINTS AND DATA MANAGEMENT**

Guidelines and computerized systems for recording and analyzing information about complaints is utilized by ODAFF and information resulting from this process is subject to disclosure to the public, including other agencies, pursuant to Oklahoma's Open Records Act. The complaint system is designed to direct complaints to the appropriate state agency with jurisdiction over the subject matter, to produce a timely response to each complaint and to document the resolution of the complaint. Efforts are also underway to computerize and manage data on a geographical information system (GIS) for all permitting activities in the state.

### **AVAILABILITY OF RECORDS TO THE PUBLIC**

In Oklahoma, there are few exceptions available to a state agency under which records may be withheld from public inspection under the Open Records Act. With respect to the AgPDES program, the issue of availability of information is specifically addressed by 2 O.S. § 2A-7(D) as follows:

1. Any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the record, report, or information, or particular portion, shall be considered confidential in accordance with the purposes of the federal Uniform Trade Secrets Act.
2. Nothing in this section shall prohibit ODAFF or an authorized representative of ODAFF including, but not limited to, any authorized contractor, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal laws under their respective jurisdictions or within their respective authorities.
3. Any records, reports, or information required to be submitted for permitting, compliance, or review that would not be considered confidential by the Environmental Protection Agency shall not be kept confidential pursuant to this subsection. Per the Oklahoma Open Records Act, the public may request hard copies of the documents and pay a fee for service, currently at \$0.25 per page.

Appendix 7-1  
**Tier I, Tier II and Tier III Permit Applications**

<b>TIER</b>	<b>ACTIVITY</b>	<b>ACTION</b>
<b>Tier I</b>	<p>Authorizations for coverage under general permits except for CAFO general permits, and major modifications to authorizations for coverage under general permits except for CAFO general permits;</p> <p>Minor modifications to permits or authorizations, including any transfer of ownership or operational control of a facility, or any administrative amendment to a permit or authorization, including the correction of typographical errors.</p>	<p>ODAFF administratively processes. Public notice is not required. Notice of application or NOI to landowner who owns the property where the permitted activity will take place is provided.</p>
<b>Tier II</b>	<p>New individual permits for minor facilities, including small and medium CAFOs;</p> <p>All individual permit, including individual CAFO permits, renewals and major modifications;</p> <p>New general permits, including CAFO general permits, and any major modification to or renewal of a general permit;</p> <p>New authorization for coverage under CAFO general permits and major modifications to authorizations for coverage under CAFO general permits.</p>	<p>Applicant publishes legal notice of application for individual permit or major modification in local newspaper,</p> <p>Applicant gives notice of application to land owners in the vicinity of the facility;</p> <p>ODAFF sends draft permit and either fact sheet or statement of basis (SOB) to EPA for review;</p> <p>ODAFF emails public notice of draft permit action to interested parties and as required by 40CFR 124.10(c)(1);</p> <p>ODAFF sends hard copies of draft permit, and either fact sheet or SOB to applicant;</p> <p>Applicant publishes notice of availability of the draft permit or authorization and makes permit documents available for public review;</p>

		<p>ODAFF publishes public notice on its web site.</p> <p><u>For general permits:</u> ODAFF places legal notice of the draft permit in state-wide newspapers, and makes draft permit documents available for public review;</p> <p>ODAFF holds public meeting or hearing on draft permit;</p> <p>ODAFF responds to comments, if any, and issues or denies the permit;</p> <p>Appeal of the permit issuance or denial, if requested.</p>
<b>Tier III</b>	New individual permits for major facilities, including large CAFOs.	<p>ODAFF holds process meeting at local area near the proposed facility, if requested;</p> <p>Applicant places legal notice of application in local newspaper;</p> <p>Applicant sends notice of application to land owner owning the property where the permitted activity will take place in the vicinity of the facility;</p> <p>ODAFF sends draft permit and fact sheet to EPA for review;</p> <p>ODAFF emails public notice of draft permit action to interested parties and as required by 40CFR 124.10(c)(1);</p> <p>ODAFF sends hard copies of draft permit and fact sheet to applicant;</p> <p>Applicant publishes notice of the draft permit and makes permit documents available for public review;</p> <p>ODAFF publishes public notice on its</p>

		<p>web site.</p> <p>ODAFF holds public meeting or hearing on draft permit;</p> <p>ODAFF prepares response to comments and either denies permit or prepares a proposed permit;</p> <p>If proposed permit is prepared, ODAFF sends proposed permit and responses to comments, if any, to applicant and EPA;</p> <p>Applicant publishes notice of the proposed permit and makes the permit &amp; and related documents available for public review;</p> <p>ODAFF holds administrative hearing, if requested;</p> <p>ODAFF issues or denies final permit;</p> <p>Appeal of the permit issuance or denial, if requested.</p>
--	--	---

## **COMPLIANCE PROGRAM**

The ODAFF compliance and enforcement program assures compliance with AgPDES permit and program requirements from covered facilities by using a combination of compliance monitoring, inspections, compliance assistance and enforcement. ODAFF reserves the right to establish state compliance and enforcement priorities but generally targets resources to coincide with EPA's national priorities and goals as set by the Office of Enforcement and Compliance Assurance. ODAFF maintains staff as described in Chapter 4 of the Program Description to perform the compliance and enforcement duties detailed in the Enforcement Management System (EMS).

The ability to determine AgPDES permit compliance is primarily founded on two components: the self reporting by the regulated facility that occurs in response to permit requirements and the compliance inspections conducted by ODAFF staff. The detailed methodology that ODAFF uses for compliance monitoring is described in Chapter 3 of the EMS. The detailed description of ODAFF compliance inspection practices is described in Chapter 4 of the EMS, Chapters 3 and 4 of the EMS are incorporated by reference in this chapter.

Compliance is ensured by ODAFF oversight of dischargers tracked through permits and authorizations, as well as through ODAFF response to citizen complaints made to the AEMS public complaint system. The citizen complaint system is a primary method whereby ODAFF identifies unauthorized discharges.

Enforcement actions, if necessary, are determined by the appropriate enforcement response from the Enforcement Management System (EMS), Enforcement Response Guide (ERG) found in Chapter 5 at Appendix 5-1, with follow up to ensure compliance is achieved. The EMS for AgPDES enforcement actions, as further described in Chapter 5 of the EMS, ensures consistent use of enforcement actions by AEMS staff.

## **ENFORCEMENT PROGRAM**

The ODAFF Field Operations and Enforcement Team of the Facility Performance Section maintains a strong and positive enforcement presence to support ODAFF water program functions. Its primary objective is to resolve all compliance problems at the lowest appropriate level to avoid serious or lengthy violations or protracted litigation. Simultaneously, the ODAFF is prepared to pursue formal civil and criminal action for all violations that require such actions. While support of traditional NPDES issues is ODAFF's first priority, it also supports a number of other water program efforts as needed. These include citizen complaints, inspections, water quality problems, storm water discharges related to agriculture activities, and animal waste discharges. Accordingly, the Field Operations and Enforcement Team works with other AEMS programs to review violations, assist in case preparation and conduct enforcement actions.

The ODAFF's compliance and enforcement program assures compliance with AgPDES permit and program requirements and regulatory and statutory provisions by using a combination of compliance monitoring, compliance assistance and enforcement. The ODAFF determines and monitors a facility's compliance with the CWA and a permittee's compliance with the AgPDES permit by inspecting the facility, preparing an inspection report, and determining the appropriate enforcement response and follow up with the facility to ensure compliance is achieved. The ODAFF uses the Enforcement Management System (EMS) to ensure consistent use of enforcement actions. Details regarding ODAFF's enforcement procedures are found in the EMS, Chapter 5, which is incorporated by reference in this chapter.

ODAFF's escalating response to noncompliance is directly related to the nature and severity of the violation, the pollutant's persistence and environmental impact, risks to public health and the environment, history of noncompliance, and a violator's timeliness and willingness to comply. Enforcement responses range from administrative remedies to criminal charges. Civil remedies (administrative and judicial) and criminal remedies are used to address documented violations and to deter future compliance problems.

## **STORM WATER PROGRAM**

### **INTRODUCTION**

The U.S. EPA developed Phase I of the NPDES Storm Water Program in 1990 in response to the 1987 amendment to the Clean Water Act (CWA) and the Phase II rule was finalized on December 8, 1999. The NPDES Storm Water Program currently covers storm water discharges from municipal storm sewer systems (MS4s) at 40 C.F.R. §§ 122.26 and 122.30 thru 122.37 and eleven categories of industries found at 40 C.F.R. § 122.26(b)(14)(i)-(xi). One industrial category, construction sites that disturb more than five (5) acres, is permitted separately because of the unique nature of these activities. Under Phase II rules, construction sites disturbing from one (1) and up to five (5) acres also require permit coverage pursuant to 40 C.F.R. § 122.26(b)(15).

The scope of the ODAFF Storm Water Program is consistent with that of the EPA's program, and covers all storm water discharges from facilities, sources and activities under the jurisdiction of the ODAFF as set forth in 27A O.S. § 1-3-101(D). "Storm water" is defined in Section 2A-2 of Title 2 of the Oklahoma Agriculture Pollutant Discharge Elimination System Act (AgPDES Act) to mean "rain water runoff, snow melt runoff, and surface runoff and drainage." This definition is identical to the federal definition contained in 40 C.F.R. § 122.26(b)(13).

The AgPDES Director has authority to issue permits for pollutants and storm water from facilities and activities within areas of environmental jurisdiction of the ODAFF, as stated in Section 1-3-101 of Title 27A of the Oklahoma Statutes. AgPDES Rules at OAC § 35:44-1-2(a)(2)(J) incorporate by reference and adopt in its entirety 40 C.F.R. § 122.26, Storm water discharges.

The Department issues general permits in accordance with the provisions specified in Section 2A-29 of O.S. Title 2 of the Oklahoma Agriculture Environmental Permitting Act. AgPDES Rules at OAC § 35:44-1-2(a)(2)(L) adopted EPA's General Permit regulations at 40 C.F.R. § 122.28 in implementing general permitting procedures. Storm water general permits are subject to all Tier II administrative procedures, including the public participation requirements. Authorization to discharge under a storm water general permit is subject to Oklahoma Tier I administrative procedures. Any new individual storm water discharge permit is subject to Tier II administrative procedures.

The AgPDES program issues permits that incorporate and ensure compliance with technology based effluent limitations under CWA § 301 and water quality based limitations under CWA § 302, as well as any applicable requirements of CWA §§ 306 and 307. The Department incorporated by reference 40 C.F.R. § 122.44 identifying requirements for establishing limitations, standards, and other permit conditions at OAC § 35:44-1-2(a)(2)(Q). Permits may include schedules of compliance and other conditions to prevent or abate pollution. A sound basis for development of effluent limitations is important to assure that the permit is both reasonable and protective of waters of the state.



## **ODAFF STORM WATER PROGRAM SCOPE**

The goal of the ODAFF storm water program is to ensure that all storm water discharges, except those expressly excluded from federal or state regulation, are authorized through an individual or general permit and that all requirements of the applicable permit are met.

Point source discharges of storm water under ODAFF jurisdiction include discharges associated with agricultural production, services, and silviculture, including SIC Groups 01, 02, 07, 08, 09. Regulation of storm water discharges from MS4s is outside ODAFF's jurisdiction while regulation of storm water discharges from construction of agriculture related facilities is within its jurisdiction. A federal effluent limitation guideline (ELG) has been promulgated for storm water discharges from construction (40 C.F.R. Part 450).

Discharge of storm water associated with construction activity as used in the AgPDES program refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g. clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process are located. Storm water runoff from construction activities can have significant impact on water quality. As storm water flows over a construction site, it picks up pollutants like sediment, debris, and chemicals. Polluted storm water runoff can harm or kill fish and other wildlife. Sedimentation can destroy aquatic habitat and high volumes of runoff can cause stream bank erosion. ODAFF incorporates by reference 40 C.F.R. § 122.26(b)(14)(x) which regulates storm water discharges associated with construction activities for a construction site of five (5) or more acres and 40 C.F.R. § 122.26(b)(15)(i) for a construction site of (1) acre or more, but less than five (5) acres, or any construction activity if so designated by the Director or the EPA Regional Administrator. This includes construction activity that disturbs less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. A CAFO requires additional authorization from ODAFF for storm water discharged during its construction phase if that construction disturbs an area greater than one acre.

Besides the above storm water discharges under categories (i) and (xi) of 40 C.F.R. § 122.26(b)(14), ODAFF also has jurisdiction over storm water discharges associated with silvicultural activities, except those covered under ELGs at 40 C.F.R. Part 429 (Wood Products Processing) and Part 436 (Mineral Mining and Processing). These are under the jurisdiction of ODEQ.

## **PROGRAM IMPLEMENTATION**

Upon NPDES program authorization, ODAFF assumes all EPA issued storm water permits for previously permitted facilities that fall under its jurisdiction in accordance with the procedures described by the Memorandum of Agreement between ODAFF and EPA. ODAFF develops general permits for storm water discharges under its jurisdiction upon expiration of EPA issued

general permits but may require on a case by case basis an individual permit for discharges associated with any industrial activity within areas of ODAFF's environmental jurisdiction.

Since ODAFF anticipates requests for authorization to discharge storm water from agroindustrial activities to be infrequent, storm water permit management is expected to be a minor portion of its permitting program in terms of resources and effort required. The Supervisors of the Facility Performance Section and Permits, Licensing and Registration Section, with assistance from EPA Region 6, provide storm water specific training to staff. Training includes regulations, pollution prevention plans, records review, and site inspections for both agroindustrial and construction sites.

The Permits, Licensing and Registration Section staff:

- receives Notices of Intent (NOI) and Notices of Termination (NOT) for general storm water permits and applications for individual permits;
- reviews storm water pollution prevention plans; and
- drafts Authorization under a General Permit or drafts an Individual Storm Water Permit.

The Facility Performance Section staff:

- investigates complaints;
- conducts inspections as appropriate; and
- recommends enforcement action to the Section Supervisor for noncompliance with the permit and regulatory requirements.

Data entry and records maintenance related to storm water is performed as follows:

- by the Administrative Assistant of the Permits, Licensing and Registration Section for permitting activities using the AEMS database, and
- by the Complaint and Enforcement Coordinator or Administrative Assistant of the Facility Performance Section for compliance and enforcement activities using the ICIS-NPDES system.

## **STORM WATER PERMITTING PROCEDURES**

AgPDES permitting processes for storm water follows special NPDES program requirements specific to storm water in accordance with 40 C.F.R. § 122.26, in addition to the permitting processes described in Chapter 6 of this Program Description. ODAFF issues individual permits or authorizations under general permits in accordance with requirements found in the CWA and implementing regulations. Permitting procedures are more fully discussed in Chapter 6 of the Program Description.

## **STORM WATER COMPLIANCE AND ENFORCEMENT PROCEDURES**

Compliance inspections are performed pursuant to the criteria established in Chapter 8 of the Program Description. Storm Water Significant Non Compliance Criteria are listed on Table 10-1 of this chapter. Enforcement action, if needed, is taken in accordance with procedures described in Chapter 9 of the Program Description and the ODAFF Enforcement Management System (EMS).

**Table 10-1**  
**Agriculture Pollutant Discharge Elimination System (AgPDES) Program**  
**Storm Water Significant Noncompliance Criteria**

A significant unauthorized discharge
Any significant unauthorized discharge at a site with a small construction waiver or conditional exclusion for no exposure
Significant violations of permit requirements. Examples of such violations include, but are not limited to: <ul style="list-style-type: none"><li>• Lack of or a substantially inadequate SWPPP or SWMP</li><li>• Substantial failure to implement or maintain BMPs and</li><li>• Substantial failure to perform required monitoring</li></ul>
Failure to obtain permit coverage as required where there is a discharge
Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more
Failure to submit required report (including failure to respond to an information request) or report is late by 90 days or more

## **INTRODUCTION**

ODAFF permitting staff develop and issue general or individual permits for CAFOs based on the statutes and regulations. OAC §§ 35:44 (AgPDES rules) adopt 40 C.F.R. Part 122 (NPDES Permit Regulations), including CAFO rules at § 122.23, § 122.42(e), Part 124 (Procedures and Decision Making), and Part 412 (Effluent Limitations Guideline for CAFO). The AgPDES rules implement the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act, 2 O.S. §§ 2A-1 et seq. and 2A-21 et seq., and apply to applicants for and holders of ODAFF permits and other authorizations.

## **GENERAL PERMIT DEVELOPMENT**

ODAFF permit writers follow general permit development procedures as described in 40 CFR § 122.28 and outlined in Chapter 6 of the Program Description when preparing an AgPDES general permit. For a CAFO general permit, following ODAFF develops a draft permit and a fact sheet that defines the following: the scope of the permit, the facilities that qualify for coverage under the permit, and the specific terms and conditions that apply to the permittees pursuant to 40 CFR § 122.23(h). Rationales for permit limits, terms and conditions are explained in the fact sheet. ODAFF then makes the draft permit and fact sheet available for review through public notice and comment. As with other AgPDES general permits, a CAFO general permit contains general permit terms and conditions for eligibility. To request coverage under a CAFO general permit, an applicant must submit a Notice of Intent (NOI) in accordance with terms established by the permit.

CAFOs seeking coverage submit an NOI and supporting documents that include a Nutrient Management Plan (NMP). Upon receipt of an applicant's NOI and NMP, an ODAFF permit writer reviews the submittal and develops the terms of the NMP for inclusion in the permit. The NOI and terms of the NMP are then made available to the public for review and comment. If no comments are received during the public comment period, the applicant is authorized to discharge in accordance with terms specific to that CAFO facility. If comments are received, ODAFF may require the facility to submit additional information. A response to comments is prepared by the permit writer, and any necessary changes are made to the terms of the NMP before an authorization is issued.

An owner or operator covered under a general permit may request exclusion from coverage by the AgPDES general permit by applying for an AgPDES individual permit. Consistent with 40 C.F.R. § 122.28(b)(3), the AgPDES Director may require any discharger authorized by a general permit to apply for and obtain an individual permit. In addition any interested party may petition the AgPDES Director to require a specific facility to be covered under an individual permit.

## **INDIVIDUAL PERMIT DEVELOPMENT**

The methodology that ODAFF uses to develop an individual CAFO permit proceeds similarly to that required for development of any individual permit. The permit writer relies upon the application and supporting documentation, including the facility's site specific NMP, to develop permit terms. The draft individual CAFO permit and fact sheet are made available for public review and comment in accordance with Tier II or Tier III administrative procedures. ODAFF decision to issue or deny issuance of the permit follows the same Tier II or Tier III administrative procedures as any other individual AgPDES permits.

## **APPLICATION REQUIREMENTS**

ODAFF utilizes EPA's CAFO application Form 2B Application - Application for Permit to Discharge Wastewater - Concentrated animal feeding operations and aquatic animal production facilities found at [http://www.epa.gov/npdes/pubs/cafo\\_fedregstr\\_form2b.pdf](http://www.epa.gov/npdes/pubs/cafo_fedregstr_form2b.pdf) and NPDES Form 1 - General Information found at [http://www.epa.gov/npdes/pubs/form\\_1.pdf](http://www.epa.gov/npdes/pubs/form_1.pdf), meeting the minimum requirements for both the NOI and individual permit application as defined in 40 C.F.R. §§ 122.21(i)(1) and 122.28(b)(2)(ii). The minimum information required to be submitted is the same for both individual and general AgPDES permits.

## **CAFO SPECIFIC REQUIREMENTS APPLICABLE TO PERMIT DEVELOPMENT**

ODAFF rule OAC § 35:44-3-2 adopts by reference 40 C.F.R. Part 122 and Part 412. ODAFF adopts by reference the EPA regulations applicable to CAFO operations: Application for Permit at 40 C.F.R. § 122.21 (a)-(b), (e)-(f), (i), and (p), Concentrated Animal Feeding Operations at 40 C.F.R. § 122.23, General Permit at 40 C.F.R. § 122.28, Conditions Applicable to Specified Categories of Permits at 40 C.F.R. § 122.42(e) and Concentrated Animal Feeding Operations (CAFO) Effluent Limitations Guidelines (ELG) at 40 C.F.R. Part 412. The Oklahoma technical standards for nutrient management is established at OAC § 35:44-3-8 and complies with the practices found in the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS) Code 590 (Nutrient Management) and Code 633 (Utilization Standards), and the Midwest Plan Service publication 18 (Livestock Waste Facilities Handbook).

ODAFF develops AgPDES CAFO permits for all CAFOs in accordance with the requirements of 40 CFR §§ 122.23 and 122.42(e), which includes the requirements for the terms of the NMP. CAFO permits include technology based effluent limitations, and to the extent applicable must include water quality based effluent limitations.

CAFO technology- based effluent limitations guidelines (ELGs) for new and existing sources are found at 40 C.F.R. Part 412, and address the following types of operations:

- Horse and sheep CAFO subcategory,
- Ducks CAFO subcategory,
- Dairy cows, cattle, and heifers CAFO subcategory, and
- Swine, poultry, and veal calves CAFO subcategory.

The following ELG requirements are applicable to large CAFOs in each of the subcategories: effluent limitations based upon best practicable technology currently available (BPT), best conventional pollutant control technology (BCT), best available technology economically achievable (BAT), new source performance standards (NSPS). The ELGs include best management practices (BMPs) for land application of manure, litter, and process wastewater, including requirements to develop and implement a nutrient management plan (NMP), to determine application rates in accordance with the State's technical standards, to conduct manure and soil testing, to inspect equipment, and to establish setbacks and other conservation measures, pursuant to 40 C.F.R. § 412.4.

Technology-based effluent limitations for any other permitted CAFOs are based on the best professional judgment (BPJ) of the permit writer.

Where technology-based effluent limitations are insufficient to meet applicable water quality standards, water quality-based effluent limitations are required, consistent with 40 CFR § 122.44(d). Water quality-based limits are established following the procedures discussed in Chapter 6.

## **PRODUCTION AREAS**

As defined at 40 C.F.R. § 122.23(b)(8), a CAFO production area includes the animal confinement area (open lots, housed lots, feedlots, confinement houses, milk-rooms, milking centers, stables, etc.), the manure storage area (lagoons, runoff ponds, storage sheds, stockpiles, pit storage, liquid impoundments, and composting piles), the raw material storage (feed silos, silage bunkers, and bedding materials), and the waste containment area (settling basins, and areas within berms and diversions that separate uncontaminated storm water).

All new and existing large beef, dairy, and heifer CAFOs (40 C.F.R. Part 412, Subpart C) and existing large swine, poultry or veal CAFOs (40 C.F.R. Part 412, Subpart D) are required to comply with the following:

- Provide adequate storage volume for manure, litter or wastewater produced at the facility including storage for a 25-year, 24-hour rainfall event, minimum treatment volume and free board.

- Divert uncontaminated storm water from contact with animals, manure, wastewater and open lots.
- Perform weekly inspections of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to wastewater and manure storage and containment structures.
- Perform daily inspections of water lines, including drinking water or cooling water lines.
- Perform weekly inspections of the manure, litter, and process wastewater impoundments; the inspection notes the liquid level in impoundments as indicated by the depth marker.
- Provide a depth marker for all open surface liquid impoundments, clearly indicating the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.
- Correct any deficiencies found as a result of daily and weekly inspections as soon as possible.
- Ensure disposal of mortalities is not in the liquid manure or process wastewater treatment systems, and mortality handling prevents discharges of pollutants to surface water, unless alternative technologies implemented under alternative performance standards and approved by ODAFF handle mortalities.
- Maintain on site a complete copy of records for a period of five years as required by 40 C.F.R. §§ 412.37(b) and 412.47(b).

Pursuant to 40 C.F.R. § 412.31(a)(2), certain individual CAFOs may voluntarily develop and install new technologies and management practices equal to or better than those required by baseline technology based effluent guidelines (BPT, BCT, and BAT) and new source performance standards (NSPS) promulgated in the CAFO regulation. The voluntary alternative performance standards are applicable to all large beef, dairy or heifer CAFOs and existing large swine, poultry or veal CAFOs.

All new large swine, poultry, and veal CAFOs (40 C.F.R. Part 412, Subpart D) must meet the same requirements described above, except that there must be no discharge of manure, litter, or process wastewater pollutants from the production area. As provided by 40 C.F.R. § 412.46(a)(1), new large swine, poultry or veal CAFOs may request ODAFF to establish AgPDES permit effluent limitations designed to ensure no discharge of manure, litter or process wastewater based upon a site specific evaluation of the CAFO's open surface manure storage structure.

The Department does not have jurisdiction over storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(14)) at facilities whose primary industrial activity is storage of grain, feed seed, fertilizer, and agriculture chemicals (e.g., SIC code 4121) and are thus required by federal regulations to have a storm water permit. However, the Department's jurisdiction includes all discharges at facilities regulated by the Department that only incidentally store grain, feed seed, fertilizer, and agriculture chemicals to support the primary activity of the facility (e.g., feed storage at a CAFO).



## LAND APPLICATION AREAS

ODAFF has adopted by reference the definition for land application as found at 40 CFR § 412.2, which defines the land application area as the land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. All regulated CAFOs must conduct nutrient management planning, following specific types of practices necessary to ensure appropriate utilization of nutrients. Those practices are:

- Identify appropriate site specific conservation practices, including appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the state.
- Identify methods for appropriate testing of manure, litter, process wastewater, and soil.
- Establish methods to land apply manure, litter, and process wastewater according to site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.
- Identify records maintained to document the implementation of the minimum components of a nutrient management plan.

All existing and new large beef, dairy, and heifer CAFOs (40 CFR Subcategory C) and large swine, poultry, and veal CAFOs (40 CFR Subcategory D) must utilize the following land application BMPs and can use other BMPs that assist in complying with the ELGs.

- Land apply manure, litter, and other process wastewater in accordance with a site specific nutrient management plan that establishes application rates for each field based on the technical standards per OAC § 35:55-3-8 and 40 C.F.R. § 122.42(e) for nutrient management.
- Collect and analyze manure, litter, and other process wastewater annually for nutrient content, including nitrogen and phosphorus.
- Collect and analyze representative soil samples for Phosphorus and Nitrogen at least once every five years for all fields where manure, litter, and other process wastewaters are applied.
- Periodically inspect equipment for land application of manure, litter, or process wastewater.
- Maintain a setback area of 100 feet from any down-gradient surface water, open tile line intake structures, sinkholes, agricultural wellheads, water well, or other conduits to surface waters where manure, litter, and other process wastewaters are not land applied. As a compliance alternative, the CAFO may elect to establish a 35 foot vegetated buffer where manure, litter, or other process wastewaters are not applied. In addition, the CAFO may demonstrate to ODAFF that a setback or vegetated buffer is unnecessary or may be reduced because implementation of alternative conservation practices or field specific conditions provide pollutant reductions equivalent or better than the reductions that would be achieved by the required setback.

- Maintain setbacks of 300 feet from water wells (applied for liquid waste), and 500 feet from residences or businesses not owned by the CAFO (applied for liquid waste).
- Application only during growing season of dominant crop grown at the fields;
- Avoid applying during strong wind toward a populated area or when a high probability exists for heavy rainfall which could produce run-off,;
- No application when the ground is frozen, saturated with water, or during rainfall events;
- Application minimizes pollution of surface and ground waters; and minimizes adverse conditions that invite pests including flies and rodents;
- Discharge or run-off from the fields is prohibited with edge of field, grass strips used as preventative measures;
- Maintain on site records in accordance with 40 C.F.R. §§ 122.42(e)(1)(ix), 412.4, 412.37(c), and 412.47(c). Records are maintained for a minimum of five (5) years, including soil and litter test results; sources of nutrient and manure or wastewater applied; dates, methods and rates of land application; crops planted, harvest dates, yields and crop residuals.

## **NUTRIENT MANAGEMENT PLANS**

Site-specific terms of an NMP are included in each CAFO permit and must be implemented by the authorized discharger. Per 40 C.F.R. § 122.42(e), the CAFO prepares and submits an NMP with its NOIs or permit application. Typically the NMP is prepared by a nutrient management specialist. The NMP describes all aspects of handling, storage, treatment and disposal or reuse of manure, litter or process wastewater for the facility. It includes the application rates of manure, litter or process wastewater and the best management practices or conservation measures required to ensure that nutrients from all sources are appropriately used by crops and cause no adverse impact to the soil and waters of the state.

The NMP prescribes application rates using one of two approaches: Linear Approach at 40 C.F.R. § 122.42(e)(5)(i), expressing maximum application rates as pounds of Nitrogen and Phosphorus and determined at least once a year; or Narrative Rate Approach at 40 C.F.R. § 122.42(e)(5)(ii), expressing rates of application that result in the amount in tons or gallons of manure, litter, and processed wastewater land applied. Once permit coverage is authorized, ODAFF follows regulatory procedures to make any facility-requested change to an NMP.

The NMP contains the following:

- Maps identifying the locations of CAFOs and the land application areas with water bodies and soil types;
- Manure and wastewater handling and storage;
- Chemicals and other contaminants handling;
- Land treatment practices and site specific conservation measures;
- Measures preventing direct contact of animals with waters of State and of U.S.
- Management of mortalities;

- Soil and litter, manure or wastewater sampling protocols and results;
- Nutrient Risk Assessment (P and N);
- Nutrient management with recommended application rates, time of application and farm nutrient budget;
- Feed management;
- Record keeping; and
- Emergency response.

## OTHER DISCHARGE LIMITATIONS

In addition to the requirements for CAFO production areas and land application areas described above, CAFO permits will include additional requirements, as applicable. These include additional limitations for process wastewater and other discharges not specifically addressed in 40 CFR 122.42(e) and 40 CFR part 412. Such limitations may be technology-based limits established on a BPJ basis or water quality-based.

In addition, CAFOs are Category (i) storm water facilities (see 40 CFR 122.26(b)(14)(i)), and thus subject to storm water permitting requirements which typically are authorized under specialized CAFO general permits (see Chapter 10 for applicable requirements).

Finally, CAFO permits may include, as applicable, any other requirements established under state law.

## **CONTROL OF RESIDUAL WASTE**

The AgPDES Act authorizes ODAFF to implement and maintain a sludge program. The AgPDES rules on sludge management allow the permit writer the discretion to permit any person or organization owning or operating facilities regulated within the areas of environmental jurisdiction of ODAFF. These facilities either generate animal waste sludge or otherwise effectively control the quality of wastewater sludge or the manner in which it is disposed. Thus, AgPDES permits are not only issued to wastewater discharging facilities, but also to animal or wastewater sludge producing and disposal facilities.

Under the Oklahoma environmental laws and rules, all animal feeding operations which dispose of animal waste, including carcasses or wastewater sludge, to a permitted municipal solid waste landfill facility must comply with OAC §§ 252:510 (Municipal Solid Waste Landfill Rules) and obtain a permit from the Oklahoma Department of Environmental Quality, Land Protection Division.

Section 405 of the Clean Water Act and 40 C.F.R. Part 503 (Standards for the Use or Disposal of Sewage Sludge) do not apply to use or disposal of sludge generated at a CAFO. 40 C.F.R. §

257.1(c)(1) states that the Part 257 regulations do not apply to agricultural wastes, including manures and crop residuals returned to the soil as fertilizers or soil conditioners.

## **SLUDGE MANAGEMENT PLANS**

The AgPDES Act at § 2-2A-6(B)(6) and at § 2-2A-6(C)(1) allows the AgPDES Director to issue sludge permits. A sludge management plan is submitted to ODAFF and approved by the AgPDES Director prior to any disposal or use of sludge, and the plan is appended to the facility's discharge permit or other issued permit.

The plan includes at least the following information:

- the source and type of sludge;
- sludge treatment process;
- amount of sludge generated;
- sludge characteristics: chemical, physical and biological characteristics;
- storage, transportation to the disposal site and disposal techniques;
- disposal site location and site characteristics (surface area, soil type, water table, and chemical characteristics of the soil);
- life expectancy of the disposal site; and
- sludge testing, sampling and reporting requirements.

## **ABBREVIATIONS AND ACRONYMS**

ACO	Administrative Compliance Order
ACPO	Administrative Compliance and Penalty Order
AEMS	Agricultural Environmental Management Services
AFO	Animal Feeding Operation
AgPDES	Agriculture Pollutant Discharge Elimination System
AgPDES Director	Director of Agriculture Pollutant Discharge Elimination System
APA	Administrative Procedures Act
BAT	Best Available Technology Economically Achievable
BCT	Best Conventional Pollutant Control Technology
BMP	Best Management Practices
BOD	Biochemical Oxygen Demand
BPJ	Best Professional Judgment
BPT	Best Practical Technology
CAFO	Concentrated Animal Feeding Operation
CATS	Compliance Assurance Tracking System
CEI	Compliance Evaluation Inspection
CFR	Code of Federal Regulations
CFS	Cubic Feet per Second
CNMP	Comprehensive Nutrient Management Plans
CO	Compliance Order
CPP	Continuing Planning Process
CSI	Compliance Sampling Inspection
CWA	Clean Water Act
DMR	Discharge Monitoring Report
ELG	Effluent Limitation Guidelines
EMS	Enforcement Management System
EPA	Environmental Protection Agency
ERG	Enforcement Response Guide
GIS	Geographical Information Systems
HB	House Bill
HQW	High Quality Waters
ICIS-NPDES	Integrated Compliance Information System – National Pollutant Discharge Elimination System

LA	Load Allocations
LTA	Long Term Average
MOA	Memorandum of Agreement
MQL	Minimum Quantifiable Levels
NAICS	North American Industry Classification System
NCR	Non Compliance Review
NMP	Nutrient Management Plan
NOT	Notice of Termination
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NPS	Nonpoint Sources
NSPS	New Source Performance Standards
OAC	Oklahoma Administrative Code
ODAFF	Oklahoma Department of Agriculture, Food, and Forestry
ODEQ	Oklahoma Department of Environmental Quality
OGC	Office of General Counsel
ORW	Outstanding Resource Waters
O.S.	Oklahoma Statutes
OWQS	Oklahoma Water Quality Standards
PCS	Permit Compliance System
SIC	Standard Industrial Code
SNC	Significant Noncompliance Criteria
SWPPP	Storm Water Pollution Prevention Plan
SWS	Sensitive Public and Private Water Supplies
TMDL	Total Maximum Daily Load
TSS	Total Suspended Solids
U.S.C.	United States Code
VSL	Violation Summary Log
WLA	Wasteload Allocation
WLE	Wasteload Evaluation
WQBEL	Water Quality Based Effluent Limits

**STATEMENT OF LEGAL AUTHORITY FOR THE OKLAHOMA DEPARTMENT OF  
AGRICULTURE, FOOD, AND FORESTRY'S NATIONAL POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PROGRAM**

As General Counsel of the Oklahoma Department of Agriculture, Food, and Forestry ("Department") with the State of Oklahoma, I certify, pursuant to § 402(b) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387 ("CWA"), that in my opinion the laws of the State of Oklahoma provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Department and to meet the requirements of 40 C.F.R. Part 123. The specific authorities discussed below are contained in lawfully enacted statutes or promulgated regulations which are in effect as of the date of this statement. NPDES permits issued by the Department are designated "AgPDES" (Agriculture Pollutant Discharge Elimination System) by the Oklahoma Statutes ("O.S."). Pursuant to 2 O.S. § 2A-3, the State Board of Agriculture ("the Board") has authority to promulgate rules implementing and effectuating the AgPDES program, including the authority to incorporate by reference any applicable rules, regulations, and policies of the Environmental Protection Agency (E.P.A.). Where provisions of the Code of Federal Regulations ("C.F.R.") have been incorporated into the Oklahoma Administrative Code ("O.A.C."), they are characterized as adopted by reference, adopted by incorporation with full text, or adopted with amendments (meaning that the language of the C.F.R. provision has been repeated in the applicable O.A.C. section with some changes, generally explained in the "Remarks" section). Where no remarks are provided, the state and Federal statutes or regulations have identical or substantially the same language.

**1. MAJOR CATEGORY PARTIAL PERMIT PROGRAM SCOPE**

State law provides authority for the Department to regulate a major category partial permit program, consistent with § 402(n)(3) of the CWA. The Department's program is a complete permit program for all discharges under the Department's jurisdiction and represents a significant and identifiable part of the state program required by § 402(b) of the CWA. The AgPDES program administered by the Department covers all discharges except for those beyond the Department's statutory authority or territorial jurisdiction. The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by the Department are discharges associated with concentrated animal feeding operations ("CAFO"), discharges from the application of biological pesticides or chemical pesticides that leave a residue, discharges resulting from silviculture activities, and discharges of storm water from agricultural activities,.

***Federal authority:*** CWA §§ 402(l)(1), 402(n)(3), 402(b) and 502(14); 42 U.S.C. § 2011 *et seq.*; and 40 C.F.R. § 122.3 (2011).

***State statutory and regulatory authority:*** 2 O.S. §§ 2-4, 2-18.2, 2A-1, 2A-2, and 2A-6 (2011); 27A O.S. § 1-3-101(D) (Supp.2010); O.A.C. §§ 35:44-1-1 and 35:44-1-2 (2011).

Remarks: The Department has the necessary jurisdiction to regulate all activities from point sources subject to the AgPDES program, including CAFO, pesticides application, silviculture and storm water from agricultural activities, pursuant to 27A O.S. § 1-3-101(D). Generally, 2 O.S. § 2A-6(A) prohibits any discharge of pollutants into or adjacent to waters of the state except in accordance with a permit issued by the Director of the AgPDES. The Department has jurisdiction over all matters affecting agriculture that have not been expressly delegated to another state or federal agency, as set out in the Oklahoma Agriculture Code, and is responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of



environmental responsibility. The Oklahoma Environmental Quality Act, at 27A O.S. § 1-3-101(D)(1)(a), (b), and (e), specifically gives the Department environmental jurisdiction over point source discharges from agricultural crop production and agricultural services. It also gives the Department environmental jurisdiction specific to the application of pesticides and facilities storing agricultural chemicals. The Department does not have jurisdiction over storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(14) at facilities whose primary industrial activity is storage of grain, feed seed, fertilizer, and agriculture chemicals (e.g., SIC code 4121) and are thus required by federal regulations to have a storm water permit. However, the Department's jurisdiction includes all discharges at facilities regulated by the Department that only incidentally store grain, feed seed, fertilizer, and agriculture chemicals to support the primary activity of the facility (e.g., feed storage at a CAFO). The Department has the necessary jurisdiction to regulate discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal and industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to ODEQ.

The Department also has the necessary jurisdiction to regulate discharges resulting from silvicultural discharges related to tree growing, planting management, log transport and log storage, and other activities, except those related to wood preservation and processing regulated pursuant to 40 C.F.R. Part 429 (Timber Products Processing) and Part 436 (Mineral Mining and Processing), which are regulated by the Oklahoma Department of Environmental Quality.

Activities that are not within the Department's environmental jurisdiction include commercial manufacturers of fertilizers, grain and feed products, and chemicals; manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural

products; slaughterhouses, except for feedlots at those facilities; and aquaculture and fish hatcheries. These exceptions to the Department's jurisdiction include, but are not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities. The Board incorporated by reference 40 C.F.R. § 122.3 as well as OAC § 35:44-1-2(a)(2)(B). In its incorporation by reference of 40 C.F.R. § 122.3, the Department is aware that subsection 122.3(h), EPA's 2006 NPDES Pesticides Rule, was vacated by the Sixth Circuit Court of Appeals on January 9, 2009. National Cotton Council of American, et al., v. US EPA, 553 F.3d 927 (2009). As a result of the Court's ruling, the Department does not view subsection (h) or the exemption from NPDES permitting requirements for certain pesticide applicators created under that subsection as a valid part of 122.3. The Department interprets its incorporation of 40 C.F.R. § 123.3 to exclude the vacated language. In accordance with the Sixth Circuit's ruling, AgPDES permits will be required for point source discharges to waters of the U.S. of biological pesticides, and of chemical pesticides that leave a residue. To avoid confusion among the regulated community, the Department intends to strike the vacated language from its incorporation by reference of 40 C.F.R. § 122.3 during the Department's next rulemaking opportunity. The definition of the term "point source" found at 2 O.S. § 2A-2(10) specifically excepts agricultural storm water discharges and return flows from irrigated agriculture consistent with CWA §§ 402(l)(1) and 502(14). The State of Oklahoma has no territorial jurisdiction over Indian Country, as defined in 18 U.S.C. § 1151, for the purpose of regulating discharges of pollutants to tribal waters in Indian Country.

## **2. AUTHORITY TO ISSUE OR DENY PERMITS**

Except for discharges noted in Section 1 which are beyond the Department's regulatory jurisdiction, state law provides authority to the Director of AgPDES to issue permits for the discharge of pollutants by existing and new point sources to the same extent as the permit program administered by the EPA under CWA § 402. The Department presently is authorized to regulate all agriculture point source storm water discharges. 2 O.S. § 2A-6(A) states it shall be unlawful for any person regulated by the Department pursuant to its environmental jurisdiction to discharge any pollutant into waters of the state except in accordance with a permit from the Director of AgPDES. 2 O.S. § 2A-2(10) defines "point source" to mean any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants or wastes are or may be discharged and which is within the Department's environmental jurisdiction. 2 O.S. § 2A-2(11) defines "pollutant" as dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into waters of the state. 2 O.S. § 2A-2(10) provides the definition of "point source" and excludes only agricultural storm water discharges and return flows from irrigated agriculture. These definitions correspond to 40 C.F.R. §§ 122.3(e) and (f), which state any introduction of pollutants from nonpoint source agricultural activities, including storm water runoff from orchards, cultivated crops, pastures, and range lands; and return flows from irrigated agriculture do not require NPDES permits.

The Department's authority to deny permits is found in 2 O.S. § 2A-5 (D)(1). O.A.C. § 35:44-1-2(a)(2)(C) adopts by reference 40 C.F.R. § 122.4(a), (b), (d), and (i) (prohibitions).In

addition, the Director does not have the authority to issue a discharge permit in the following circumstances:

1. issuance would authorize the discharge of a radiological, chemical, or biological warfare agent, or high level radioactive waste;
2. issuance could result, in the judgment of the United States Secretary of the Army acting through the Chief of Engineers, in the substantial impairment of anchorage and navigation of any waters of the United States;
3. issuance is objected to in writing by the Administrator of the USEPA or designee, pursuant to any right to object which is granted to the Administrator under Section 402(d) of the Federal Clean Water Act; or
4. issuance would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the federal CWA.

***Federal authority:*** CWA §§ 208(b) and (e), 301(a) and (f), 402(a)(1), 402(b)(1)(A), 402(b)(6), and 402(d)(2) ; and 40 C.F.R. §§ 122.3(e) and (f), 122.4, 122.21(a), 122.28, 122.41, 123.29, and 123.44 (2011).

***State statutory and regulatory authority:*** 2 O.S. §§ 2-5, 2-18.2, 2A-1, 2A-2, 2A-3, 2A-5, 2A-6, 2A-7, and 2A-29 (2011); and O.A.C. §§ 35:44-1-1 and 35:44-1-2 (2011).

Remarks: 2 O.S. § 2A-5 states that the Director of AgPDES shall have the power and duty to:

1. issue, deny, modify, amend, renew, refuse to renew, suspend, place on probation, reinstate or revoke licenses or permits; and
2. issue final orders and assess administrative penalties.

2 O.S. § 2A-6(A) states it shall be unlawful for any person regulated by the Department pursuant to its environmental jurisdiction to discharge any pollutant into waters of the state except in accordance with a permit from the Director of AgPDES. 2 O.S. § 2A-1(B)(1) notes that one of the purposes of the AgPDES Act is to implement the federal National Pollutant Discharge Elimination System requirements. 40 C.F.R. § 122.41(n) is incorporated by reference at OAC 35:44-1-2(a)(2)(N). . 2 O.S. § 2A-29 gives the Department power to issue general permits. Alternatively, individual permits can be issued for a discharge when regulation by a general permit is not appropriate. In addition, OAC 35:44-1-2(a)(2)(L) adopts by reference 40 C.F.R. § 122.28 relating to general permits. In accordance with the authority in 2 O.S. § 2A-3(B)(3), the Department may take necessary and appropriate actions to revoke, deny, modify, refuse to renew, suspend, place on probation, reinstate, or otherwise administer and enforce discharge permits and sludge permits issued by the United States Environmental Protection Agency which are transferred to the Department upon federal authorization of the AgPDES program of the Department.

2 O.S. § 2A-7(C) affirmatively prohibits the issuance of a permit authorizing the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste as required by 40 C.F.R. § 122.4(f). The same section prohibits the issuance of a permit that, in the judgment of the Secretary of the Army, acting through the Chief of Engineers, would result in the substantial impairment of anchorage and navigation of any waters of the United States; or is objected to in writing by U.S. E.P.A. or would authorize a discharge in conflict with a plan approved under CWA § 208(b), as required by 40 C.F.R. § 122.4(e), (c), and (g). See also CWA §§ 208(e) and 402(d). The Department incorporates by reference 40 C.F.R. § 122.4(a)(b)(d) and (i) at O.A.C. § 35:44-1-2(a)(2)(C). Except for matters which have been

expressly delegated to another state agency, 2A O.S. § 2-5 states the Board shall be the official agency of the State of Oklahoma in the relations of this state with the United States Department of Agriculture, any other federal agency including USEPA, or any agency or person of this or another state on matters pertaining to sampling, inspection, and grading of agricultural products, and other regulatory matters in the field of agriculture. The Department is statutorily designated as an official environmental regulatory agency for agricultural point source and nonpoint source pollution which also includes non agricultural applications of pesticides and certain silvicultural activities as discussed in Section 1 of this document, within its jurisdiction pursuant to 2 O.S. § 2-18.2.

### **3. AUTHORITY TO APPLY FEDERAL STANDARDS AND REQUIREMENTS**

#### **a. Effluent Standards and Limitations and Water Quality Standards**

ODAFF has the authority under Oklahoma law to issue permits that apply and ensure compliance with technology based effluent standards under CWA § 301 and water quality based standards under CWA § 302, as well as any applicable requirements of CWA §§ 306 and 307. 2 O.S. § 2A-6 of the AgPDES Act allows the Director of AgPDES, prior to issuing pollutant discharge permits, to prescribe schedules of compliance and conditions as necessary to result in the following:

1. prevent, control, or abate pollution, including water quality based limitations as are necessary to protect the water quality and existing and designated beneficial uses of the waters of the state;
2. require application of best practicable control technology currently available, best conventional pollutant control technology, best available technology economically

achievable, best professional judgment, or other limitations as the Director may prescribe;

3. require compliance with national standards of performance and toxicity;
4. set limitations or prohibitions designed to prohibit the discharge of pollutants;
5. set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality;
6. set terms and conditions for sludge and land application of wastewater and for impoundments in accordance with rules promulgated by the Board; and
7. comply with the provisions of the AgPDES Act and the requirements of the federal CWA.

***Federal authority:*** CWA §§ 301(b), 301(e), 302, 303, 304(d), 304(f), 306, 307, 402(b)(1)(A), 403, 501(c), and 510; 40 C.F.R. § 122.44, and Subchapter N (2011).

***State statutory and regulatory authority:*** 2 O.S. 2A-6 (2011); and OAC § 35:44-1-2 (2011).

Remarks: To aid in its exercise of that authority, the Department has incorporated by reference 40 C.F.R. § 122.44 in O.A.C. § 35:44-1-2(a)(2)(Q). National standards of performance referred to in 2 O.S. § 2A-6 includes new source performance standards (NSPS).

**b. Authority to establish limitations based on Best Professional Judgment**

In the absence of formally promulgated effluent standards and limitations under CWA §§ 301(b) and 307, state law provides authority to apply in terms and conditions of issued permits on a case-by-case basis, effluent limitations to achieve the purposes of these sections of the CWA using the permitting authority's best professional judgment (BPJ). Limitations may be based upon an assessment of technology and processes as required under statutory factors

specified in CWA sections 301(b)(2) and 304(b), based on available information on the permit applicant's industrial class or category, and include authority to apply to existing point sources, effluent limitations based on application of the best practicable control technology currently available, the best conventional pollutant control technology, or the best available technology economically achievable, as appropriate.

***Federal authority:*** CWA §§ 301, 304(b), 307, 402(a)(1), and 402(b)(1)(A); and 40 C.F.R. § 122.44 and Part 125, Subpart A (2011).

***State statutory and regulatory authority:*** O.A.C. § 35:44-1-2 (2011).

**Remarks:** The Department adopted 40 C.F.R. Part 125, Subpart A, by reference in O.A.C. § 35:44-1-2(a)(4), and 40 C.F.R. § 122.44, by reference in O.A.C. § 35:44-1-2(a)(2)(Q), as part of its rules. When technology based effluent limitations are not sufficient for a permittee to meet the applicable water quality standard for the receiving water, the Department shall develop water quality based effluent limitations in permits. 40 CFR §122.44(d) provides the requirements for utilizing water quality based effluent limitations in addition to or more stringent than technology based limits in permits.

**c. Schedules of Compliance**

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations within the shortest reasonable time consistent with the requirements of the CWA and 40 C.F.R. § 122.47. This includes authority to set interim compliance dates in permits that are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality.

***Federal authority:*** CWA §§ 301(b), 303(e), 304(b), 306, 307, 402(b)(1)(A), 502(11), and 502(17); 40 C.F.R. §§ 122.47, 122.62, and 122.63 (2011).



***State statutory and regulatory authority:*** 2 O.S. § 2A-5 (2011); and OAC 35:44-1-2 (2011).

Remarks: The Department has incorporated the requirements of 40 C.F.R. § 122.47 into O.A.C. 35:44-1-2(a)(2)(T). The Department has adopted 40 C.F.R. § 122.62 at O.A.C. § 35:44-1-2(a)(2)(X) as part of its rules which specifically addresses revisions of compliance schedules in permits. Schedules of compliance are not available to meet technology based effluent limitations.

**d. Variances**

The Department may review and act upon variances from applicable effluent limitations based on the provisions and procedures found in 40 C.F.R. § 124.62.

***Federal authority:*** CWA §§ 301, and 302; and 40 C.F.R. §§ 122.21(m)-(o), and 124.62 (2011).

***State statutory and regulatory authorities:*** 2 O.S. § 2A-3 (2011) and O.A.C. § 35:44-1-2 (2011).

Remarks: The Department has adopted O.A.C. § 35:44-1-2(a)(2)(G) incorporating 40 C.F.R. § 122.21(m)-(o) and O.A.C. § 35:44-1-2(a)(3)(P) incorporating 40 C.F.R. § 124.62 by reference as part of its rules.

**4. AUTHORITY TO LIMIT DURATION OF PERMITS**

State law provides authority to limit the duration of permits to a fixed term not exceeding five (5) years. State law provides for the administrative continuance of expired permits, if the permittee files a timely and complete application for a new permit, until such time as a final determination is rendered on the application for renewal.

***Federal authority:*** CWA § 402(b)(1)(B); and 40 C.F.R. §§ 122.6 and 122.46 (2011).

***State statutory and regulatory authority:*** 2 O.S. 2A-6 (2011); and O.A.C. § 35:44-1-2 (2011).

Remarks: At 2 O.S. 2A-6(C)(2), permits are limited to no more than five (5) years in duration. The Department has adopted O.A.C. § 35:44-1-2 (a)(2)(E) to incorporate by reference 40 C.F.R. § 122.6, concerning continuation of existing permits as well.

## **5. AUTHORITY TO APPLY RECORDING, REPORTING, MONITORING, ENTRY, INSPECTION, AND SAMPLING REQUIREMENTS**

State law provides that any holder of a permit or applicant for a permit shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to:

1. enter and inspect the facility in accordance with the provisions of the AgPDES Act;
2. investigate complaints;
3. have access at any reasonable time for the purposes of reviewing and copying any records required to be maintained;
4. inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required;
5. have access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site; and
6. obtain copies of records, plans, reports, or other information required by the Department to be submitted upon request and subject to and made available for inspection at reasonable times to any authorized representative of the Department. Any authorized representative of the Department may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by permit, order, or rules.

The Department has the authority to require, through an AgPDES permit, the owner or operator of any system for the treatment, storage, discharge, or transport of pollutants to:

1. establish, maintain, and submit plans, specifications, records, and other data relative to disposal systems or any part thereof, in connection with the issuance of discharge permits or in connection with any permit, purposes, or requirements of the AgPDES Act;
2. make reports, to install, calibrate, use, and maintain monitoring equipment or methods including biological monitoring methods;
3. take samples of effluent in the manner as may be prescribed; and
4. provide other information as may be reasonably required.

***Federal authority:*** CWA §§ 308(a), and 402(b)(2) and (9); 40 C.F.R. §§ 122.41, 122.42, 122.44, and 122.48 (2011).

***State statutory and regulatory authority:*** 2 O.S. §§ 2-14, 2A-3 and 2A-7 (2011); O.A.C. § 35:44-1-2 (2011).

**Remarks:** The Department has adopted 40 C.F.R. §§ 122.42 (a) and (d)-(e) and 122.44 by reference at O.A.C. §§ 35:44-1-2(a)(2)(O) and 35:44-1-2(a)(2)(Q). 2 O.S. § 2A-7(E) specifies that the reference to observance of a facility's health standards and sanitary requirements does not limit the Department's authority to enter any part of a facility, it simply describes the Department's duty to observe precautions during an inspection. 2 O.S. § 2-14(C) authorizes the Board to obtain an administrative or other warrant if any person refuses, denies or interferes with any right of access and inspection. In addition, O.A.C. § 35:44-1-2(a)(2)(Q) incorporates by reference the entirety of 40 C.F.R. § 122.41. O.A.C. 35:44-1-2(a)(2)(U) incorporates 40 C.F.R. § 122.48 by reference.

## **6. AUTHORITY TO ISSUE NOTICES, TRANSMIT DATA, AND PROVIDE OPPORTUNITY FOR PUBLIC HEARINGS AND JUDICIAL REVIEW**

The AgPDES Act defines several terms related to the types of hearings conducted as part of the permitting and enforcement process. For example, "formal public meeting," also referred to as a "public meeting," is a formal public forum held by the Department and conducted by a presiding officer. Under the AgPDES Act, the term "public meeting" also means "public hearing" when held pursuant to the requirements of the Code of Federal Regulations or the AgPDES Act. A "public meeting" satisfies the requirements for a public hearing under 40 C.F.R. Part 124. 2 O.S. § 2A-2(8) states that a public meeting shall not be a quasi-judicial proceeding. The public meeting or hearing is for the purpose of providing an opportunity for the presentation of oral comments and submission of written views within reasonable time limits determined by the presiding officer. A "process meeting" is defined as a meeting open to the public and is held by the Department soon after receipt of the permit application to explain the permitting process and the public participation opportunities applicable to a specific Tier III application. The "process meeting" is in addition to the public hearing. Finally, the terms "administrative hearing," "administrative permit hearing," "enforcement hearing" and "administrative enforcement hearing" are all defined as quasi-judicial individual proceedings conducted pursuant to Oklahoma's Administrative Procedures Act and the Oklahoma Administrative Code. The "administrative hearing" is also in addition to the formal public meeting and is applicable only to Tier III applications in response to a request from the applicant or any person or qualified interest group that alleges the operation may have a direct, substantial and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group. A "qualified interest group" is defined at

2 O.S. § 2A-22 (6) as any organization with twenty-five (25) or more members who are Oklahoma residents. The "response to comments" is a document prepared by the Department after its review of timely public comments received on a draft denial or draft permit. The response should include:

1. specific reference to any provisions of the draft permit that were changed in the proposed or final permit and the reasons for the changes; and
2. a brief description and response to all significant comments raised during the public comment period or any hearing regarding the draft denial or draft permit.

In accordance with 2 O.S. § 2A-3(A)(5), the Department has the authority to implement rules that ensure that any state whose waters may be affected by the activities allowed by a permit may submit written recommendations to the Department. If the recommendations or any parts thereof are not incorporated, the Department will notify the affected state in writing and shall provide the reasons therefore.

The AgPDES Act uses a tier system to identify the types of permits available and the level of public participation provided for each. Appendix 7-1 of the Program Description contains a chart identifying the various tiers and activities under each tier. First, some actions and applications are identified as Tier I activities. Tier I is a basic process of permitting that includes an application, notice to the landowner, and Department review. Tier I applications are never for individual permits or general permits themselves. Pursuant to the Tier I process, a permit is issued or denied by the Permits, Licensing, and Registration Section Manager or a technical supervisor of the Division that is delegated the authority by the Director of AgPDES. Tier I applications include:

1. new, modified or renewed authorization under a general permit, except authorization pursuant to a concentrated animal feeding operations general permit;
2. transfer of discharge permit considered minor pursuant to 40 C.F.R. § 122.63(d);
3. minor modification of discharge permit or of an authorization pursuant to a general permit, including non-substantial changes to a nutrient management plan incorporated into a CAFO permit; and
4. administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

The Tier II process includes the Tier I process, but also requires published notice of the filing of an application, preparation of the draft permit or draft denial, published notice of the draft permit or draft denial and opportunity for a formal public meeting, and holding the formal public meeting, if necessary. For the Tier II process, a permit is issued or denied by the Permits, Licensing, and Registration Section Manager or a technical supervisor of the Division so long as the authority is delegated by the Director of AgPDES. Tier II applications include:

1. a new individual discharge permit for small and medium concentrated animal feeding operations;
2. permit renewal or major modification for a facility with an individual discharge permit, including concentrated animal feeding operation permits;
3. new, modified or renewed general permit promulgation;
4. new, major modification, or renewed authorization under a concentrated animal feeding operation general permit; and
5. any new individual discharge permit for a non-major facility.

Finally, Tier III is an expanded process of permitting which includes the Tier II process, plus the opportunity for a process meeting, which is a public meeting held to explain the Tier III permitting process and the public participation opportunities available under the Tier III process. In addition, following the public comment period and public meeting, if any, on a Tier III draft permit or draft denial, the Department either issues a denial of the permit application or prepares a proposed permit. If a proposed permit is prepared, the applicant publishes notice of the availability of the proposed permit, the Department's response to comments on the draft permit, and the opportunity for an administrative permit hearing on the proposed permit. The Tier III process requires a permit to be issued or denied by the Director of AgPDES. Tier III applications are defined as new individual discharge permits for any facility not already covered by Tier I or II. A Tier III facility includes applications for a new large concentrated animal feeding operation that does not qualify for a general permit or any other new major discharge facility within the Department's environmental jurisdiction.

The Board has the authority to promulgate rules for each tier that will to the greatest extent possible enable applicants to follow a consistent application process, ensure that uniform public participation opportunities are offered, provide for uniformity in notices required of applicants—and set forth procedural application requirements. The rules designate certain activities as Tier I, II, or III. In making these determinations, the Board is required by 2 O.S. § 2A-23 (B) to consider information and data offered on:

1. the significance of the potential impact of the type of activity on the environment;
2. the amount, volume, and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted, or land applied;
3. the degree of public concern traditionally connected with the type of activity;

4. the federal classification, if any, for the proposed activity, operation, or type of site or facility; and
5. any other factors relevant to the determinations.

The tier designations, at a minimum, are consistent with any analogous classifications set forth in applicable federal programs. The procedures for preparation and issuance of Tier II and Tier III permits comply with all applicable requirements for NPDES permits contained in 40 C.F.R. Parts 122 (EPA Administered Programs: The National Pollutant Discharge Elimination System) and 124 (Procedures for Decision Making). In addition, the procedures also comply with 40 C.F.R. Part 25 (Public Participation). Consistent with its authorities and procedures, the Department will ensure that EPA receives a copy of all complete permit applications received by the Department, except those for which permit review has been waived.

***Federal authority:*** CWA §§ 101(e), 304(i)(B), 308(b), 402(b)(3)-(b)(6); 40 C.F.R. Part 25; 40 C.F.R. Part 122; 40 C.F.R. Part 124; 40 C.F.R. §§ 123.30, 123.42, 123.43 (2011).

***State statutory and regulatory authority:*** 2 O.S. §§ 2A-2, 2A-3, 2A-22, 2A-23, 2A-25 to 2A-28 (2011); 75 O.S. §§ 308a, 309, 310, 312, 317, 318, 319, 322, and 323 (2011); O.A.C. §§ 35:44-1-2, 35:44-1-21, 35:44-1-30, 35:44-1-33, 35:44-1-35, 35:44-1-38, 35:44-1-39, and 35:44-1-40 (2011).

**Remarks:** In addition to the statutory analysis related to public participation discussed below, the Department incorporated 40 C.F.R. §§ 124.10(a)(1)(ii), (iii), and (iv), (b) – (e), 124.11, 124.12(a), and 124.17(a) and (c) by reference at O.A.C. § 35:44-1-2(a)(3) to regulate public notice of permit actions, public comments, requests for public hearings, requests for public meetings, and procedures related to receipt of, consideration of, and response to public comment. The parts of these provisions that are equivalently treated in the state program are



addressed by O.A.C. § 35:44-1-2(a)(3). In 2 O.S. § 2A-25, state law says that upon filing a Tier II or III application with the Department, the applicant publishes notice of the filing as a legal notice in one newspaper of general circulation local to the proposed new site or existing facility. The Department also incorporated 40 C.F.R. § 124.10(c)(2)(i) by reference at OAC § 35:44-1-2(a)(3) which states notice is published in a daily or weekly newspaper within the area affected by the facility or activity. “Local to the proposed new site or existing facility” is interpreted by the Department to be analogous to and as broadly construed as the federal standard of “area affected by the facility or activity.” The publication identifies the public locations where the application is available for review that includes a public location in the county where the proposed new site or existing facility is located. Unlike Tier II applications, the Tier III process also includes publication notice of a thirty (30) day opportunity to request a process meeting, or gives the date, time and place for a process meeting. The process meeting is only used in the Tier III process. The purpose of the process meeting is to educate the public regarding the permitting process, timelines, and public participation opportunities. If the Department receives a timely request and determines that a significant degree of public interest in the application exists, it will schedule and hold the process meeting. A significant degree of public interest is the same standard found in 40 C.F.R. § 124.12(a). The applicant is entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting scheduled by the applicant regarding the proposed facility or activity may be combined, upon agreement of the Department and the applicant, with the process meeting. This process does not stay the review of the application by the Department.

Upon conclusion of the technical review of a Tier II or III application, the Department prepares a draft denial or draft permit. The notice for a draft denial is given by the Department,

but notice of a draft permit is given by the applicant pursuant to 2 O.S. § 2A-26(A)(1). The Oklahoma Department of Environmental Quality, as the only other Oklahoma state agency with NPDES authority, requires notice to be performed in the same manner. The notice is published as a legal notice in one newspaper of general circulation local to the area affected by the proposed new site, existing facility, or activity. The notice identifies public locations where the draft denial or draft permit may be reviewed, including a public location in the county where the proposed new site or existing facility is located, and provides a set time period for public comment and for the opportunity to request a formal public meeting on the respective draft denial or draft permit. The time period for public comment and the opportunity to request a formal public meeting is set at least thirty (30) calendar days after the date the notice is published unless a longer time is required. In lieu of the notice of opportunity to request a formal public meeting, the notice may include the date, time, and place of a previously scheduled formal public meeting. Upon the publication of notice of a draft permit, the applicant shall make the draft permit and the application, except for proprietary provisions otherwise protected by law, available for public review at a public location in the county where the proposed new site or existing facility is located. The Oklahoma Department of Environmental Quality, the only other state agency in Oklahoma with NPDES authority, also requires the applicant to perform this function. If a timely written request for a formal public meeting on the draft denial or draft permit is received, the Department will promptly schedule and hold a formal public meeting. Notice of the public meeting will be given to the public at least thirty (30) calendar days prior to the meeting date and the public meeting will be held at a location convenient to and near the proposed new site or existing facility no more than one hundred twenty (120) calendar days after the date notice of the draft denial or draft permit was published. At the formal public meeting,

any person may submit oral or written statements and data concerning the draft denial or permit. The public comment period is automatically extended to the close of the public meeting. Upon good cause shown, the presiding officer may extend the comment period further to a date certain by announcing the extension and new deadline at the meeting. The applicant or a representative of the applicant may be present at the meeting to respond to questions.

For draft permits or draft denials for Tier II applications on which no comment or public meeting request was received in a timely manner and on which no public meeting was held, the final permit shall be issued or denied. For draft permits or draft denials for Tier II applications when comments or a public meeting request was received in a timely manner or a public meeting was held, the Department will consider the comments, prepare a response to comments pursuant to 40 C.F.R. § 124.17, and make a final denial of the permit or issue the draft permit as is or as amended. The response to comments will be prepared within ninety (90) working days after the close of the public comment period unless the Director of AgPDES determines that additional time is required due to circumstances outside the control of the Department. Circumstances may include, but are not be limited to, an act of God, a substantial and unexpected increase in the number of applications filed, additional review duties imposed on the Department from an outside source, or outside review by a federal agency.

For a draft permit or draft denial for a Tier III application, the Department shall prepare a response to any comments received in a timely manner and either issue a final denial or prepare a proposed permit. When the proposed permit is prepared, the applicant publishes legal notice in one newspaper of general circulation local to the proposed new site or existing facility of the tentative decision of the Department to issue the permit. The notice identifies the locations where the proposed permit and the Department's response to comments on the draft permit may

be reviewed, and includes a public location in the county where the proposed new site or existing facility is located. The notice offers a twenty (20) working day opportunity to request an administrative hearing to participate as a party. To obtain judicial review of any finally issued Tier III permit, any person or qualified interest group must exhaust their administrative remedies by requesting an administrative permit hearing within the twenty (20) working days. The Department is responsible for ensuring that any additional notice requirements provided by law are followed by the applicant.

According to 2 O.S. § 2A-28(D)(4), the opportunity to request an administrative permit hearing shall be available to the applicant and any person or qualified interest group that alleges that the operation may have a direct, substantial, and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group, defined as any organization with twenty-five (25) or more members who are Oklahoma residents. Qualified interest group standing is the equivalent of federal organizational standing. This is consistent with 40 C.F.R. § 123.30 because standing is not narrowly restricted to a particular class of persons. The opportunity to request a hearing is open to persons who show some actual or threatened injury, including harm to an aesthetic, environmental, or recreational interest, as discussed in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). Oklahoma's standing rules are broad enough to provide for, encourage, and assist public participation in the administrative process before the Department. For purposes of the AgPDES program, any organization that does not meet the State's definition of "Qualified Interest Group" may seek standing as a "person" as that term is defined under 40 C.F.R. §122.2 (incorporated by reference at O.A.C. § 35:44-1-1).

If no written administrative permit hearing request is received by the Department by the end of twenty (20) working days after the publication date of the notice, the final permit is issued. However, if the final decision of the Department is to deny the permit, it gives notice to the applicant and issues a final denial.

When an administrative permit hearing is requested in a timely manner on a proposed permit, all timely requests are combined into a single hearing. The hearing is a quasi-judicial proceeding and shall be conducted by an administrative law judge in accordance with the Administrative Procedures Act found at 75 O.S. §§ 250 *et seq.* In all cases, the applicant is required to be a party to the hearing. A scheduling conference is held within sixty (60) calendar days after the end of the hearing request period. The Department promptly moves to an evidentiary proceeding in which all parties have the right to present evidence before the Department on whether the proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with permit requirements and whether the proposed permit should be issued as is, amended and issued, or denied. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default judgment with regard to that party; however, no final permit is issued solely on the basis of a default judgment. If the Department decides to reverse its initial draft decision, it withdraws the draft denial or draft permit and prepares a new draft permit or draft denial, as appropriate. Notice of the withdrawal of the original draft and preparation of the revised draft is required to be given in the same manner the original draft permit was noticed. The Department reopens the comment period and provides an additional opportunity for a formal public meeting on the revised draft as well.

Upon final issuance or denial of a permit application, the Department provides public notice of the final permit decision and the availability of the response to comments.

An appeal of a final permit decision or any final order connected to it is made in accordance with the provisions of the Administrative Procedures Act and is limited to the participants of the administrative proceedings. Any applicant, within ten (10) days after final denial of the application for a new original permit when no final order was issued, may petition the Department for reconsideration on the grounds stated in the Administrative Procedures Act as if the denial was a final order. Disposition of the petition shall be by order of the Director of AgPDES pursuant to the Administrative Procedures Act. O.A.C. § 35:44-1-21 identifies application procedures for the specific tiered application types. O.A.C. § 35:44-1-30 identifies the types and contents of notices. O.A.C. § 35:44-1-33 states that for Tier II and III permit modification action, only those issues relevant to the modifications are reopened for public review and comment. O.A.C. § 35:44-1-35 allows for preissuance permit review and corrections; notice of significant corrections to a permit based on Tier II and III applications require the applicant to publish legal notice in one newspaper local to the site of any correction or change proposed by ODAFF which significantly alters a facility's permitted size, capacity or limits. In addition, the Department opens a new public comment period and reconvenes a public meeting and administrative hearing to receive public comments on the proposed significant corrections.

O.A.C. § 35:44-1-38 identifies the following as Tier I applications:

1. new, modified or renewed authorization under a general permit, except authorization pursuant to a concentrated animal feeding operations general permit;

2. transfer of a discharge permit considered minor pursuant to 40 C.F.R. § 122.63(d);
3. minor modification of a discharge permit or of an authorization pursuant to a general permit; and
4. administrative amendment of permits or other authorizations for the correction of administrative or typographical errors, including minor modifications.

Tier II applications are identified as follows in O.A.C. § 35:44-1-39:

1. new individual discharge permit for small and medium concentrated animal feeding operations;
2. permit renewal or major modification for a facility with an individual discharge permit, including concentrated animal feeding operation permits;
3. new, modified or renewed general permit promulgation;
4. new, major modification, or renewed authorization under a concentrated animal feeding operation general permit; and
5. any new individual discharge permit for a non-major facility.

Finally, O.A.C. § 35:44-1-40 identifies Tier III applications as any new individual discharge permit for any facility not already covered by Tier I or II, and includes a new large concentrated animal feeding operation or a new major discharge facility.

Any appeal of an AgPDES decision is pursuant to the Administrative Procedures Act found at 75 O.S. § 308a *et seq.* The provisions of Article II of the Administrative Procedures Act govern the hearing procedures for the Department.

Generally, 75 O.S. § 309 establishes guidelines for individual proceedings, including permit application administrative hearings. All parties, including the applicant, person or

qualified interest group, are afforded an opportunity for hearing after reasonable notice. Consistent with 40 C.F.R § 124.10, notice is a minimum of thirty (30) days. The notice includes requirements of both 40 C.F.R. § 124.10 and 75 O.S. § 309:

1. the name and address of the office processing the permit action for which notice is being given;
2. name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
3. a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
4. name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;
5. a brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;
6. a general description of the location of each existing or proposed discharge point and the name of the receiving water
7. any additional information considered necessary or proper;
8. a statement of the time, place and nature of the hearing;
9. a statement of the legal authority and jurisdiction for the hearing;
10. a reference to the particular sections of the statutes and rules involved; and



11. a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved with a more definite and detailed statement provided later.

The opportunity to respond and present evidence and argument on all issues involved is afforded to all parties. In addition, unless otherwise precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default. An individual proceeding before the Department is a trial type hearing pursuant to 75 O.S. § 310. Pursuant to 75 O.S. § 312 , a final agency order adverse to a party shall be in writing and include findings of fact and conclusions of law, separately stated. According to 75 O.S. § 317, a final agency order is subject to rehearing, reopening or reconsideration. Any application or request for a rehearing, reopening or reconsideration is made by any party aggrieved by the final agency order within ten (10) days from the date of the entry of the final agency order. The grounds are limited to:

1. newly discovered or newly available evidence, relevant to the issues;
  2. need for additional evidence adequately to develop the facts essential to proper decision;
  3. probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the final agency order;
  4. need for further consideration of the issues and the evidence in the public interest;
- or
5. a showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

In addition, the grounds listed above do not prevent rehearing, reopening or reconsideration of a matter by the Department at any time on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. Any new hearing ordered is confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is timely filed, the period within which judicial review is sought runs from the final disposition of the application.

75 O.S. § 318 and following provides for judicial review of final agency orders. A party aggrieved by a final agency order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review. A party is aggrieved if their legal, monetary, personal, or property rights are denied or infringed by the final agency order. For purposes of judicial review of an AgPDES permit decision, this includes actual or threatened injury to an aesthetic, environmental, or recreational interest. The standing requirements of the Administrative Procedures Act are consistent with federal standing rules for NPDES permits and are broad enough to provide for, encourage, and assist public participation in the administrative process before the Department. The judicial review provisions do not prevent other means of review, redress, relief or trial de novo, available due to constitutional provisions. A motion for new trial or an application for rehearing is not a prerequisite to secure judicial review. Generally, proceedings for review shall be instituted by filing a petition in the district court of the county in which the party seeking review resides or where the property interest affected is situated within thirty (30) days after the appellant is notified of the final agency order. Copies of the petition are served upon the agency and all other parties of record, and proof of service is filed in the court within ten (10) days after the filing of the petition. The state district court, in its discretion, may permit other interested persons to intervene. Pursuant to 2 O.S. § 318(D), the prevailing party

may be afforded attorney fees and court costs for the appeal if the court determines the appeal is frivolous or brought only to delay the effect of the final agency order. In most cases, each party will be responsible for their own costs of the appeal. 75 O.S. § 319 states the filing of a proceeding for review does not stay enforcement of the agency decision. However, the agency may do so, or the reviewing court may order a stay upon terms as it deems proper. In every proceeding in any court for the review of an order of an agency, upon filing of an application supported by verified statements of material fact establishing that the enforcement of the order pending final decision would result in present, continuous and irreparable impairment of the constitutional rights of the applicant, a stay of the enforcement of the order and the accrual of penalties is entered upon the condition that:

1. injury to adverse parties or to the public, as the case may be, can be obviated through the furnishing of security adequate to compensate for any loss which may be suffered as a result of the stay in the event the order is affirmed, in whole or in part; or
2. a supersedeas bond, in the amount and with sureties prescribed and approved by the reviewing court, in its sound judicial discretion is filed with the court. If an application for supersedeas, accompanied by a proposal for a supersedeas bond, is not acted upon by the court within forty-five (45) days from the filing thereof, the order appealed from is automatically superseded and stayed upon the filing of the bond proposed in the application, provided, however, that the court thereafter may reasonably modify the terms of the supersedeas as to amount and surety.

Pursuant to 75 O.S. § 322, in any proceeding for the review of an agency order, the Supreme Court, district court, or superior court in the exercise of proper judicial discretion or authority may set aside or modify the order or reverse it and remand it to the agency for further

proceedings if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the agency findings, inferences, conclusions or decisions, are:

1. in violation of constitutional provisions;
2. in excess of the statutory authority or jurisdiction of the agency;
3. made upon unlawful procedure;
4. affected by other error of law;
5. clearly erroneous in view of the reliable, material, probative and substantial competent evidence, but without otherwise substituting its judgment as to the weight of the evidence for that of the agency on question of fact;
6. arbitrary or capricious; or
7. because findings of fact upon issues essential to the decision were not made.

The reviewing court may remand the case to the agency for the taking and consideration of further evidence if it is deemed essential to a proper disposition of the issue. The reviewing court shall affirm the order and decision of the agency if it is found to be valid and the proceedings are free from prejudicial error to the appellant. 75 O.S. § 323 says an aggrieved party, or the agency, without any motion for a new trial, may secure a review of any final judgment of a district or superior court under this act by appeal to the Supreme Court.

## **7. AUTHORITY TO PROVIDE ACCESS TO INFORMATION**

Pursuant to AgPDES, any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the record, report, or information, or particular portion, is considered confidential in

accordance with the purposes of the federal Uniform Trade Secrets Act. However, the Department is not prohibited from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal law under their respective jurisdictions or within their respective authorities. In addition, any records, reports, or information required to be submitted for permitting, compliance, or review that would not be considered confidential by the USEPA are not kept confidential pursuant to this subsection.

In addition to the AgPDES provisions, the Oklahoma Open Records Act acknowledges the Oklahoma Constitution recognizes and guarantees that all political power is inherent in the people. As a result, it is the public policy of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act does not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor does it establish any procedures for protecting any person from release of information contained in public records. The purpose of the Act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision bears the burden of establishing that records are protected by a confidential privilege.

Records of AgPDES permits and other related documents are available for public review at the headquarters of the Department in Oklahoma City, Oklahoma.

***Federal authority:*** CWA §§ 304(i)(B), 308(b), 402; 40 C.F.R. Part 2; 40 C.F.R. § 122.7 (2011); 5 U.S.C. § 552; and 18 U.S.C. § 1905.

***State statutory and regulatory authority:*** 2 O.S. § 2A-7(D) (2011); 51 O.S. § 24A.1 *et seq.* (2011); and OAC § 35:44-1-2 (2011).

**Remarks:** 51 O.S. § 24A.3 defines the term "record" as all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not include computer software, nongovernment personal effects, unless public disclosure is required by other laws or regulations, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body.

Oklahoma's general statement on records is all records of public bodies and public officials are open to any person for inspection, copying, or mechanical reproduction during regular business hours, pursuant to 51 O.S. §§ 24A.2 and 24A.5. Exceptions to the Open Records Act are very limited in scope. One of the exceptions relates to federal records. 51 O.S. § 24A.13 states that records coming into the possession of a public body from the federal

government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law.

Consistent with CWA § 304(i)(B), 2 O.S. § 2A-7(D) requires that the Department make inspection and investigation reports and any other routinely prepared compliance information publicly available. The same section also provides that all records, reports, data, or other information obtained relative to or from sources or potential sources of discharges, except for information which would divulge trade secrets is available to the public and is equivalent to CWA §§ 308(b) and 402(j). AgPDES also exempts “effluent data” from its trade secrecy protection provisions. O.A.C. § 35: 44-1-2(a)(2)(F) incorporates 40 C.F.R. § 122.7(b) and (c) by reference.

#### **8. AUTHORITY TO TERMINATE OR MODIFY PERMITS**

Pursuant to the CWA § 402(b)(1)(c), cause to modify or terminate permits includes the following:

1. Violation of any condition of the permit;
  2. Obtaining a permit by misrepresentation or failure to disclose all relevant facts;
- and
3. Changes in circumstances which require either a temporary or permanent reduction or elimination of the permitted discharge.

State law incorporates by reference 40 C.F.R. § 122.62, Modification or revocation and reissuance of permits, and 40 C.F.R. § 122.64, Termination of permits, providing authority to terminate or modify permits for cause. A complete listing of authorized causes for permit modification and causes for termination is set out in these regulations.

***Federal authority:*** CWA § 402(b)(1)(C); 40 C.F.R. §§ 122.41(f), 122.62, 122.63, 122.64 (2011).

***State statutory and regulatory authority:*** 2 O.S. § 2A-6(C)(6) (2011); and OAC § 35:44-1-2 (2011).

Remarks: AgPDES rules incorporate by reference 40 C.F.R. §§ 122.41, 122.62, 122.63, and 122.64 to address termination and modifications of permits at OAC § 35:44-1-2(a)(2)(N), (X), (Y), and (Z).

## **9. AUTHORITY TO ENFORCE THE PERMIT AND THE PERMIT PROGRAM**

The Director of AgPDES is statutorily authorized to enforce permits and the permit programs. Among the Director's responsibilities are the assessment of penalties, issuance of final orders, ensuring of compliance with the CWA, investigation and abatement of violations of permits, administrative orders, rules, and violations of the AgPDES Act. In addition, the Director applies sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms, and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection, and sampling.

***Federal authority:*** CWA §§ 304(a)(2)(C), 309, 402(b)(7), 402(h), 504; 40 C.F.R. §§ 122.2, 123.26, and 123.27 (2011).

***State statutory and regulatory authority:*** 2 O.S. §§ 1-3, 2A-5, 2A-6, and 2A-9 (2011)

Remarks: Provisions for civil and criminal penalties apply to all persons, as defined in 2 O.S. § 1-3(9). "Person" means the state, any municipality, political subdivision, institution, individual, public or private corporation, partnership, association, firm, company, public trust, joint stock company, trust, estate, state or federal agency, other governmental entity, or any other legal entity or an agent, employee, representative, assignee or successor thereof. 2 O.S. § 2A-9 discusses the various administrative, civil, and criminal methods for enforcement of AgPDES.



When the Department finds that any person is in violation of any act, rule, order, permit, condition or limitation implementing the AgPDES Act, or any previously issued discharge permit, the Director of AgPDES may issue an order requiring the person or entity to comply with the provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. However, the issuance of a compliance order or denial, placing on probation, reinstatement, suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil, or criminal proceeding. A copy of any order issued is sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of the order is served on any appropriate individual officers or service agents. Any order issued states with reasonable specificity the nature of the violation, and specifies a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

The Director of AgPDES is authorized to assess an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation. The total amount of the administrative fine shall not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00) per violation. Factors taken into account by the Director of AgPDES include the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefit savings, if any, resulting from the violation, and any other matters as justice may require. A single operational upset which leads to simultaneous violations of more than one pollutant

parameter shall be treated as a single violation. The Director of AgPDES is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the Director is authorized to issue a compliance order. Civil penalties for violations are allowed up to Ten Thousand Dollars (\$10,000.00) per day for each violation. Criminal violations may be punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Ten Thousand Dollars (\$10,000.00) per day for each violation, or by imprisonment for not more than six (6) months for each violation, or both fine and imprisonment.

#### **10. AUTHORITY FOR PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS**

First, the AgPDES Act does not in any way impair or in any way affect the right of a person to recover damages for pollution that are otherwise allowed by law in a court of competent jurisdiction. In addition, any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any health, environmental, pecuniary, or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the AgPDES Act or rules, permits or orders.

***Federal authority:*** CWA § 101(e); 40 C.F.R. §§ 123.27(d), 123.28, and 123.30 (2011).

***State statutory and regulatory authority:*** 2 O.S. § 2A-9 and 27A O.S. §§ 1-1-203 and 1-1-204 (2011).

Remarks: The Department is in compliance with 40 C.F.R. § 123.27(d)(1) by allowing intervention as of right in any civil or administrative action to obtain remedies by any citizen

having an interest which is or may be adversely affected. 2 O.S. § 2A-9 ensures that the Department's enforcement of AgPDES does not affect a person's ability to seek damages for pollution. It also allows interested parties to intervene in any administrative proceeding before the Department or in any civil proceeding relating to violations of the AgPDES Act or rules, permits, or orders as of right pursuant to 2 O.S. § 2A-9(c).

Citizen complaints are addressed pursuant to 27A O.S. § 1-1-203(B)(1). The Department is required to promulgate rules establishing time periods for complaint resolution. 27A O.S. § 1-1-204(A) requires the Department to develop, implement and utilize a complaint investigation and response process that will ensure the Department has authority to investigate, mitigate and resolve complaints, respond to complaints in a timely manner by initiating appropriate action and informing the complainant regarding potential actions that may occur. Complainants are notified in writing of the resolution of the complaint, and of the complainant's options for further resolution of the complaint if the complainant objects or disagrees with the actions or decision of the agency.

## **11. AUTHORITY TO ISSUE GENERAL PERMITS**

For similarly situated facilities, the Department may expedite the permitting process by issuing general permits. General permits are subject to all of the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking is not applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit, other than a CAFO general permit. Applications for authorizations to discharge under a CAFO general permit are considered Tier II applications. General permits are limited to activities under the Tier I and Tier II classifications.

***Federal Authority:*** CWA § 402(a); 40 C.F.R. §§ 123.23, 123.27, and 123.28 (2011).

***State statutory and regulatory authority:*** 2 O.S. § 2A-29 (2011); O.A.C. § 35:44-1-2 (2011).

Remarks: 2 O.S. § 2A-29 authorizes the Department to issue general permits. In addition, 40 C.F.R. § 122.28 is adopted by reference into O.A.C. § 35:44-1-2(a)(2)(L).

## **12. AUTHORITY TO ISSUE PESTICIDE NPDES PERMITS**

The Department is designated as the lead agency in pesticide control according to the Oklahoma Environmental Quality Act. The Department has the necessary jurisdiction to regulate discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal and industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to ODEQ.

The Department works with USEPA Region 6 and is authorized to implement and enforce the FIFRA program in Oklahoma. The Department is also the State/EPA liaison in the development and implementation of the Pesticide State Management Plan. A major statutory responsibility of the agency is to prevent the pollution of the surface and ground waters of Oklahoma with pesticide products. Under the Pesticide State Management Plan, ODAFF will develop and implement point and nonpoint source prevention measures, participate in relaying use information, carry out monitoring, develop and implement response to detection, keep records of action taken and provide progress reports to EPA. The Department also houses the Oklahoma Pesticide Lab. The Department has primary authority in Oklahoma to regulate all aspects of pesticide application.

***State statutory and regulatory authority:*** 2 O.S. §§ 2-4 and 3-81 *et seq.* (2011) and 27A O.S. § 1-3-101 (2011).

Remarks: In 2 O.S. § 2-4(A)(16), the State Board of Agriculture, and therefore the Department, has jurisdiction over all matters affecting agriculture as contained and set out in the Oklahoma Agricultural Code which have not been expressly delegated to another state or federal agency and is responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of environmental responsibility. The Oklahoma Environmental Quality Act, at 27A O.S. § 1-3-101(D)(1)(a), (b), and (c), specifically gives the Department environmental jurisdiction over point sources discharges from agricultural crop production and agricultural services. It also gives the Department environmental jurisdiction specific to the application of pesticides, silviculture, and facilities storing agricultural chemicals.

### **13. CONFLICT OF INTEREST — STATE BOARD OF AGRICULTURE AND THE DIRECTOR OF AgPDES**

The governing body of the Department is the constitutionally created State Board of Agriculture (Board). The five member Board serves as the rulemaking authority for the Department. Each position is appointed by the governor with Senate confirmation. Each member of the Board represents one of four agricultural districts in the state with one at large member. The Board is authorized to promulgate rules for the administration, implementation and enforcement of all regulatory programs of the ODAFF, including those related to AgPDES. The members of the Board are required to be farmers per the Oklahoma Constitution. As a result of this requirement and to avoid actual or apparent conflicts of interest in the governance of the AgPDES program, the Oklahoma Legislature created a Director of AgPDES. The Director of AgPDES is appointed by the Commissioner of Agriculture. Only the Director has the power and duty to:

1. issue, deny, modify, amend, renew, refuse to renew, suspend, place on probation, reinstate or revoke licenses or permits; and
2. issue final orders and assess administrative penalties.

Qualifications for the Director include having experience in agriculture, forestry, conservation, environmental sciences, or other areas as may be required by the Commissioner. In addition, the Director shall not currently or in the past two years be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department and, with regard to the exercise of powers and duties associated with the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall meet all requirements of Section 304 of the federal Clean Water Act and applicable federal regulations promulgated thereunder by the United States Environmental Protection Agency regarding conflict of interest.

The Director exclusively is authorized to perform the duties listed above for the AgPDES program on behalf of ODAFF and the duties may not be delegated to other employees of the Department except as specifically provided in the Oklahoma Agriculture Pollutant Discharge Elimination System Act. In the event of the temporary absence of the Director, the Director may delegate the exercise of these powers and duties to an acting director during the absence of the Director subject to an organizational structure approved by the Commissioner. In the event of a vacancy in the position of Director, the Commissioner may designate an interim or acting Director who is authorized to exercise the powers and duties until a permanent Director is employed. Any designee exercising the powers and duties of the Director as authorized or on a temporary, acting, or interim basis also must meet the same income requirements as the Director. These procedures ensure the AgPDES program is compliant with 40 C.F.R. §123.25(c).

To comply with 40 C.F.R. § 123.25(c) and Section 304(i) of the federal Clean Water Act, the Director has complete authority to rule on permit applications and is personally free of any conflict of interest. The Director is able to issue permits and independently administer the permit program without being subject to control by the Board. In reality, a “Chinese wall” fully insulates the Board members who have actual or perceived conflicts of interest from making permit decisions.

***Federal authority:*** CWA generally; § 304(i)(2)(D); 40 C.F.R. § 123.25 (2011).

***State statutory and regulatory authority:*** Oklahoma Constitution Article 6, Section 31; 2 O.S. §§ 2A-1 and 2A-5 (2011).

Remarks: The Department is normally governed by the State Board of Agriculture. However, both constitutional and statutory provisions require members of the Board and the Commissioner of Agriculture to be farmers. The Oklahoma Constitution at Article 6, Section 31 states, "A Board of Agriculture is hereby created to be composed of five members all of whom shall be farmers and shall be selected in the manner prescribed by law." Statutory discussions of the membership of the State Board of Agriculture more specifically define the eligibility for membership. 2 O.S. § 2-1(A)(2) states that each member shall be a farmer who has:

1. at least five (5) years practical experience during the ten (10) years immediately preceding their appointment; and
2. lived on and operated a farm after reaching the age of twenty-one (21) years.

Due to the possibility that a member of the State Board of Agriculture could have a potential conflict with Clean Water Act requirements, Oklahoma statutorily created the position of the Director of AgPDES. This position is appointed by the Commissioner of Agriculture and the person must meet all applicable CWA and 40 C.F.R. Part 123 criteria. The Director of

AgPDES is responsible for all final AgPDES actions, including permit issuance and enforcement. The Director provides input to the Oklahoma Water Resources Board in the development of Water Quality Standards. The Director serves at the pleasure of the Commissioner and is required to have experience in agriculture, forestry, conservation, environmental sciences, or other areas. The Director shall not be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department and, with regard to the exercise of powers and duties associated with the AgPDES Act, shall meet all requirements of Section 304 of the federal CWA and applicable federal regulations regarding conflicts of interest. The powers and duties of the Director are exercised exclusively by the Director on behalf of the Department and may not be delegated to other employees of the Department except in certain circumstances. In the event of the temporary absence of the Director, the Director may delegate the exercise of these powers and duties to an acting director subject to an organizational structure approved by the Commissioner. In the event of a vacancy in the position of Director, the Commissioner may designate an interim or acting Director who is authorized to exercise the powers and duties until a permanent Director is employed. Any designee exercising the powers and duties of the Director as authorized or on a temporary, acting, or interim basis shall meet the same financial and other requirements the Director meets.

#### **14. INCORPORATION BY REFERENCE**

State law provides authority to incorporate federal legal authority by reference. Such incorporation by reference is proper and enforceable under state law and may be used with



regard to any and all of EPA's NPDES regulations which are applicable to state AgPDES and pretreatment programs.

***State statutory and regulatory authority:*** 2 O.S. § 2A-3(A) (2011); 75 O.S. § 250 (2011).

Remarks: The Administrative Procedures Act, 75 O.S. § 250 provides the procedure for adoption of rules by state agencies. The procedure includes publication in the Oklahoma Register of the notice of intent for proposed rulemaking and a brief explanation. The APA also states that in order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The standards must be readily available to the public for examination at the administrative offices of the agency.

#### **15. STATUS OF DEPARTMENT GENERAL COUNSEL AS LEGAL COUNSEL**

40 C.F.R. § 123.23 specifically allows the attorney for a state agency with independent legal counsel to submit the statement of legal authority. The Department employs an Office of General Counsel with a General Counsel and four (4) Assistants General Counsel.

***Federal authority:*** 40 C.F.R. § 123.23 (2011).


***State statutory and regulatory authority:*** 74 O.S. § 18c(A) (2011).

Pursuant to 40 C.F.R. § 123.23, to qualify as “independent legal counsel” the attorney signing the statement must have full authority to independently represent the Department in court on all matters pertaining to the AgPDES program. The undersigned General Counsel of ODAFF has full authority to represent the Department in court in all matters pertaining to the state program. The Department is specifically authorized to employ or appoint attorneys to advise or

represent the Department in any matter by 74 O.S. § 18c(A). In fact, only twenty five (25) other agencies of Oklahoma are authorized to employ attorneys. The remainder relies on the Oklahoma Attorney General's Office for legal representation. All administrative enforcement and civil litigation is handled by the Department. Criminal matters are investigated by the Department and the Department's General Counsel has the authority to prosecute those criminal matters as well.

### **CONCLUSION**

I certify that in my opinion the laws of the State of Oklahoma provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Department. All necessary authorities to support the state "Program Description" have been cited.

8-16-12 By:   
Date Teena G. Gunter

**General Counsel for the Oklahoma Department of Agriculture, Food, and Forestry**

## **TABLE OF CONTENTS**

**Letter from Oklahoma’s Governor Mary Fallin**

**Memorandum of Agreement**

**Statement of Legal Authority**

**Program Description**

**Chapter *i*:            Abbreviations and Acronyms**

**Chapter 1:           Introduction**

**Chapter 2:           Scope of the Program**

**Chapter 3:           Agency Jurisdiction**

**Chapter 4:           Resources and Funding**

**Chapter 5:           Organization and Responsibilities**

**Chapter 6:           Permitting Procedures**

**Chapter 7:           Public Participation**

**Chapter 8:           Compliance Program**

**Chapter 9: Enforcement Program**

**Chapter 10: Storm Water Program**

**Chapter 11: CAFO Specific Permitting Procedures**

## **Enforcement Management System**

**Chapter 1: Introduction**

**Chapter 2: Information Management**

**Chapter 3: Compliance Review**

**Chapter 4: Compliance Inspections**

**Chapter 5: Enforcement Evaluation**

## **Oklahoma Statutes and Regulations**

**Appendix 1: Open Records Act**

**Appendix 2: Administrative Procedures Act**

**Appendix 3: AgPDES Statutes**

**Appendix 4: AgPDES Rules**